

**NOMINATIONS TO
THE DEPARTMENT OF COMMERCE,
THE CORPORATION FOR PUBLIC BROADCASTING,
AND THE DEPARTMENT OF TRANSPORTATION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

NOVEMBER 4, 2003

Printed for the use of the Committee on Commerce, Science, and Transportation



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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**NOMINATIONS TO THE DEPARTMENT
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DEPARTMENT OF TRANSPORTATION**

TUESDAY, NOVEMBER 4, 2003

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA**

The CHAIRMAN. Good morning. We meet this morning to examine the qualifications of several individuals nominated by the President to serve the American people.

We welcome our first nominee, Michael Gallagher, his family members and guests. Mr. Gallagher has been asked to serve as the Assistant Secretary for Communications and Information for the Department of Commerce, and as the Administrator of the National Telecommunications and Information Administration. If confirmed, Mr. Gallagher would be the President's principal advisor on telecommunications policy and would be responsible for formulating policies, supporting the development and growth of telecommunications and related industries, providing policy and management over the Federal Government's use of spectrum, and overseeing telecommunications facilities and grants.

Our second nominee is Cheryl Halpern. Ms. Halpern has been nominated by the President to serve on the Board of Directors for the Corporation for Public Broadcasting (CPB). The CPB is a private, nonprofit corporation that distributes funds from the Federal Government and donations from private entities to aid the development of programming for public radio and television stations. Ms. Halpern has been serving on the Board of the CPB since August 6, 2002, as a recess appointee. We welcome Ms. Halpern and her family and guests.

Also nominated to serve on the Board of Directors for the CPB is Elizabeth Courtney. Ms. Courtney is currently the President and CEO of Louisiana Public Broadcasting, which includes a statewide public television network. Ms. Courtney started her career as a capital correspondent, and we welcome her today——

[Laughter.]

The CHAIRMAN.—with her family and guests.

We'll also consider two positions to serve at the Department of Transportation, DOT. We welcome back Mr. Kirk Van Tine, who has been nominated to be Deputy Secretary of DOT. Mr. Van Tine is very familiar with this Committee's work, along with the many challenges confronting our Nation's transportation system, from his previous service as DOT General Counsel, a position that he held for over 2 years. We welcome Mr. Van Tine.

Finally, we welcome Mr. Jeffrey Rosen, who has been nominated to serve in the DOT General Counsel position previously held by Mr. Van Tine. Mr. Rosen is a former Partner at Kirkland & Ellis.

Before we go further, could we ask each of the nominees to introduce their family members who are present here in the audience, beginning with you, Mr. Gallagher.

Mr. GALLAGHER. Thank you, Senator McCain. Thank you, Mr. Chairman.

First, I'd like to introduce my mother, Kathy Bennett, and my stepfather, Fred Bennett, who came here from California to be here today.

The CHAIRMAN. Welcome. I'm glad you got out of there.

[Laughter.]

Mr. GALLAGHER. Next, I'd like to introduce my 89-year-old grandfather, who, prior to this trip here today, had not been east of the state of Nevada.

[Laughter.]

The CHAIRMAN. Welcome, sir, glad you're here.

Mr. GALLAGHER. And then I'd like to introduce my three children: Alexandria, Daniel, and Madison. Alexandria and Daniel are natives of Washington State, and Madison is a Virginian.

The CHAIRMAN. Welcome to three wonderful children.

Mr. GALLAGHER. And, finally, I'd like to introduce the Chief Executive Officer of my family, my wife Rhonda, who shares my deep passion for our great country and commitment to public service.

The CHAIRMAN. Welcome to your entire family, and I know this is a wonderful moment for you. Thank you.

Ms. Halpern?

Ms. HALPERN. Much as I would like to have had the opportunity to introduce my family, they are still in London, where we all had gathered for a family celebration. So I flew back alone.

The CHAIRMAN. I guess you're saying that we, here at the Committee, are—screwed up your life.

[Laughter.]

The CHAIRMAN. Is that what you were saying, Ms. Halpern?

Ms. HALPERN. No, I just got to go back.

The CHAIRMAN. We will quickly go to Ms. Courtney.

[Laughter.]

Ms. COURTNEY. Thank you, Mr. Chairman.

I'd like to introduce my husband, who's with me, Bob Courtney, in the front row, from Baton Rouge, Louisiana, and my—

The CHAIRMAN. Welcome, sir.

Ms. COURTNEY.—and my brother, George Hardy, who came from San Diego, California.

The CHAIRMAN. Welcome, George.

And Mr. Van Tine?

Mr. VAN TINE. Chairman McCain, I'd like to introduce my wife Barbara, and I'd like to say that I appreciate her support very much.

The CHAIRMAN. Thank you. Welcome, Barbara. And Mr. Rosen?

Mr. ROSEN. Thank you, Mr. Chairman.

I'd like to introduce my wife Kathy and my three children, Anne, Sally, and Jim.

The CHAIRMAN. Welcome to the family. Thank you.

Thanks to all the family members for being here today. This is an important time, and we're grateful for the nominees' willingness to serve the United States of America, and we're grateful for it.

I'd like to ask my friend, Senator Allen, who would like to make some opening comments about the nominees.

Senator Allen?

**STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman, and thank you for holding this hearing, even if it did inconvenience Ms. Halpern—
[Laughter.]

Senator ALLEN.—because I'm sure they won't—she can go back and tell great stories to her family.

But I appreciate the opportunity to talk about, in particular, two very well-qualified nominees to the Transportation secretariat. They are long-time residents of Virginia, particularly Northern Virginia, Mr. Kirk Van Tine and Jeffrey Rosen. Their leadership will be important for the Department of Transportation, helping lead its direction in constructive ways. Let me just say a few things about both of them.

Mr. Kirk Van Tine has been nominated, as you say, Mr. Chairman, to be Deputy Assistant Secretary of Transportation. Given the current needs for our transportation infrastructure, this position really does carry added importance and will require his strong leadership.

The President's choice of Kirk Van Tine—it's the second time he's done this. This is the second nomination. He served as part of the President's leadership team. On September 24, 2001, the U.S. Senate confirmed Mr. Van Tine as Department of Transportation General Counsel on a 97-to-0 vote. That vote reflected his accomplishments and his record. He has earned the trust, obviously, of the President and Secretary Mineta. It's well founded. He has good common sense advice, and particularly in regard to the implementation of security legislation enacted in the aftermath of September 11 disasters.

Prior to joining the Bush Administration, Kirk Van Tine was a partner in the firm of Baker & Botts, where he specialized in business litigation for 23 years. I am also pleased to inform, particularly, the Chairman that Kirk Van Tine served in the United States Navy from 1966 to 1975. He is a graduate of the U.S. Naval Academy and also my alma mater, the University of Virginia Law School, graduating in 1978.

Mr. Jeffrey Rosen will be succeeding—hopefully succeeding Kirk Van Tine as General Counsel, overseeing the many legal offices

and affairs, advising the Secretary. He has been a senior partner, is a senior partner, in the firm of Kirkland & Ellis, focusing on litigation practice on a variety of matters, from antitrust cases to product liability, information technology, freight railways, power-plant development construction, fiber optic communications. It's a great resume there. He has served even as an adjunct—has served as an adjunct professor at Georgetown's Law Center for the past 8 years. Currently, he is on the Board of Trustees at Northwestern University. He's committed to the Commonwealth of Virginia a variety of community activities, from the Virginia Historical Society, the Fairfax Historical Society, Arlington Historical Affairs, and Landmark Review Board in the past. And I will say, in these biographical reviews, it indicates that he did support George W. Bush in 2000, but I see, when he was up in Massachusetts in college, and later in Virginia, he was an active Democrat in Arlington and in Virginia in the late 1980s. I overlook all of that since—

[Laughter.]

Senator ALLEN.—because since 1998 he has been a member of the Reston Raiders Hockey Club, showing great character and tenacity. So he does bring a good, strong academic background, as well, but the fact that he's a hockey player, looking at his character, shows a certain amount of grit and character. And, to me, that's a most impressive thing, that we need hockey players advising—

[Laughter.]

Senator ALLEN.—the Department of Transportation on how to—sometimes you get up against the boards and you've got to get that puck out, one way or the other.

So, Mr. Chairman, thank you for allowing me to introduce these two fine gentlemen, and I look forward to their confirmation on the floor.

The CHAIRMAN. Thank you, Senator Allen. Thank you for your personal interest in these nominees.

Senator Lautenberg, do you have any opening comments?

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. I do.

I thank you for holding this important hearing on nominees that represent a range of agencies under jurisdiction of the Committee. They're important positions that require leadership skills and candidates of the highest quality, and I believe, Mr. Chairman, that we have such folk here.

I want to briefly focus on one of the nominations, that of Mr. Van Tine, for the Deputy Secretary of the Department of Transportation. Mr. Van Tine is not a newcomer to the Department, having served as General Counsel for the last 2 years. He's now nominated to the top policy position in the Department, and I have specific concerns about the policy direction of DOT.

With regard to rail, I'm very disappointed in the Administration's unrealistic proposal for Amtrak. Even the DOT Inspector General has confirmed that under the President's \$900 million budget request, the railroad can't survive.

And regarding aviation, as well, I thought the Administration's attempt to privatize the air traffic control system—for reasons that have little to do with transportation policy, the Administration has vigorously pursued a privatization agenda, frankly, I think, at the cost of the safety and security of airline passengers. And even after both the House and the Senate passed FAA reauthorization bills that explicitly prohibited privatization of air traffic controllers, we're now faced with a conference report that's silent on the issue, clearing the way, I think, for the Administration's dangerous privatization scheme.

Mr. Chairman, I also want to greet Ms. Cheryl Halpern, who is a New Jersey person. I know her father very well. He's a exceptional man who survived the worst that mankind could put upon mankind and went on to succeed in America, as few have, because he had the determination to put the past behind him, build his family, build his business, and build his reputation. So I welcome Ms. Halpern here.

And I thank you, Mr. Chairman, for holding this Committee hearing now.

The CHAIRMAN. Thank you.

We'll begin with—we'll have opening statements, and we'll begin with you, Mr. Gallagher. And if you'd pull the microphone close so that the recorder can get—

Welcome.

**STATEMENT OF MICHAEL D. GALLAGHER, NOMINEE TO BE
ASSISTANT SECRETARY FOR COMMUNICATIONS AND
INFORMATION, U.S. DEPARTMENT OF COMMERCE**

Mr. GALLAGHER. Thank you, Mr. Chairman. And thank you for scheduling this hearing to quickly.

It is truly an honor to appear before this Committee. I am also truly gratified and honored to be the President's nominee to be Assistant Secretary of Commerce for Communications and Information. I am committed to serving the American people in a manner worthy of the support and confidence the President and Secretary Evans have shown in me.

In addition to my prepared statement, I would like to add the following thoughts. We are truly living in a remarkable era for technology in our country. The technological progress that is sweeping our country—from fiber optics to computers, throughout our radio spectrum, from a.m. radio bands up to now 90 gigahertz bands, marrying nanotechnology with computers—present us with bold new frontiers and great opportunities. That technological progress is enriching our lives, boosting our economy, and making us safer. Though the challenges to policy may be daunting, I am energized and optimistic to be here today as an American, a husband, a father, and a public servant.

Thank you, and I look forward to answering any questions.

[The prepared statement and biographical information of Mr. Gallagher follow:]

PREPARED STATEMENT OF MICHAEL D. GALLAGHER, NOMINEE TO BE
ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION,
U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, Senator Hollings, and Members of the Committee,

Thank you for the opportunity to appear before you today. I have had the opportunity to work closely with you and your capable staff on a number of difficult policy issues that have faced our country over the last two years, including a number of very difficult spectrum access issues. If confirmed, I look forward to further cooperation and shared achievement on behalf of the American people.

I am also very grateful for the honor which President Bush and Secretary Evans have conferred on me by nominating me to be Assistant Secretary of Commerce for Telecommunications and Information.

Telecommunications, technology, and the Internet are key drivers in our economy and society today. Since passage of the Telecommunications Act of 1996, our country has moved far beyond voice communication over copper telephone wires. As anticipated by Congress, the forces of competition, free markets and investment have dramatically improved our technology and telecommunications foundation. In 1996, the Internet was relatively new as a consumer phenomenon. Today, it is estimated that virtually every business, every classroom, and over 60 percent of households have access to and use the Internet. According to industry sources, in 1996 we had 38 million analog wireless customers; today we have over 150 million digital customers projected to use nearly 800 billion minutes this year. DVD players did not exist in 1996; today they are as common as VCRs and represent a content revenue stream greater than theater receipts. In 1996 broadband Internet access was a distant vision; today over 20 percent of American households subscribe to broadband service offered either by their cable or telephone provider. WiFi and other spectrum based technologies were theoretical in 1996; today they are widely available in consumer electronics stores and are changing the landscape for both wireless and wired services alike. All of these innovations and new services have enriched our lives and solidified the U.S. economy as the most productive and resilient in the world.

However, the correction of the of the technology and telecom "bubble" of the late 1990s, a wave of corporate scandals, and an economy challenged by recession and terrorist attacks have taken a toll on the technology and telecommunications sectors. These forces have resulted in hundreds of billions of lost investment, hundreds of thousands of lost jobs, and scores of bankruptcies. One critical focus of policy in the coming years must be the fostering of an environment of entrepreneurship, competition and investment for the technology and telecommunications sectors of our economy—so they can continue to enrich our society. If I am confirmed, I look forward to working with the Congress, the FCC, and U.S. industry in the development of national policies focused on cultivating that environment.

Many other policy challenges face our telecommunications and technology sectors as well. While the Department of Commerce has had great success in working with the FCC on key spectrum issues like the authorization of ultrawideband technologies, finding an additional 90 MHz of spectrum for advanced wireless services ("3G"), and doubling the amount of spectrum for WiFi at 5 GHz, the pressure on spectrum policy will only continue to rise with the invention and deployment of very small computers that incorporate wireless capabilities. That pressure will require the NTIA, FCC and other Federal agencies to redouble their commitment to the technical resources necessary to forge sharing arrangements that both authorize new technologies, but also protect our very valuable incumbent systems.

Similarly, the continued growth and adoption of broadband Internet access and the productivity gains of our economy due to further deployment of computers and Internet-based technologies are dependent on the development of sound policies. The Administration, the Congress, and the independent agencies must work together to develop bipartisan policies to address the issues posed by a number of issues including, spam, critical infrastructure protection, privacy, cybersecurity, piracy, and the protection of children on the Internet. If confirmed, I look forward to leading NTIA in playing its part in meeting those challenges.

The march of progress in technology and telecommunications is not unique to the United States. The deployment of smaller, more powerful computers, fiber optics, and wireless technologies have made the world much smaller and more competitive. NTIA must work together with the FCC, the State Department, other Federal agencies, and U.S. industry to continue to open foreign markets to U.S. companies and set the international policy framework for connecting networks and computers on terms favorable to both the economic and national security of the United States.

In closing, let me once again thank you and the Committee for the opportunity to be here today. I look forward to the opportunity to continue to serve this Adminis-

tration and work with the distinguished members of this Committee to meet the challenges facing our technology and telecommunications sectors.

I look forward to answering any questions you may have for me.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nick names used.): Michael D. Gallagher.
2. Position to which nominated: Assistant Secretary of Commerce for Communications and Information.
3. Date of nomination: October 14, 2003.
4. Address: (List current place of residence and office addresses.)
 Residence: Information not released to the public.
 Office: U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.
5. Date and place of birth: January 23, 1964; Arcadia, California.
6. Marital status: Married. Wife is Rhonda Lee Gallagher.
7. Names and ages of children: Alexandria Lee Gallagher (12); Daniel Michael Gallagher (9); Madison Kathleen Gallagher (8).
8. Education:
 Saint Francis High School, La Canada, California; high school diploma awarded June 1982 (attended September 1978 to June 1982).
 University of California Berkeley, Berkeley, California; BA in Economics and BA in Political Science *summa cum laude* awarded in June 1986 (attended September 1982 to June 1986).
 UCLA School of Law, Los Angeles, California; Juris Doctor in June 1989 (attended September 1986 to May 1989).
9. Employment record:
 Deputy Assistant Secretary of Commerce for Communications and Information
 U.S. Department of Commerce
 Washington, DC
 August 14, 2003 to present; and November 2, 2001 to May 26, 2003)
 Deputy Chief of Staff for Policy and Counselor to the Secretary
 U.S. Department of Commerce
 Washington DC
 May 27, 2003 to August 13, 2003
 Staff Vice-president State Public Policy
 Verizon Wireless
 Bellevue, WA
 April 2000 to October 2001
 Managing Director State Public Policy
 AirTouch Communications
 Bellevue, WA
 April 1998 to April 2000
 Of Counsel
 Perkins Coie, LLP
 Seattle, WA
 June 1997 to April 1998
 Administrative Assistant
 Congressman Rick White (WA-01)
 Washington DC
 January 1995 to June 1997
 Senior Associate
 Perkins Coie, LLP
 Seattle, WA
 September 1989 to December 1994
 Summer Associate
 Allen Matkins Leek Gamble and Mallory
 Irvine, CA
 August 1988

Summer Associate
 Paul Hastings Janofsky and Walker
 Los Angeles, CA
 June 1988 to July 1988
 Summer Associate
 Allen Matkins Leek Gamble and Mallory
 Irvine, CA
 June 1987 to August 1987

10. Government experience: None other than as listed above.

11. Business relationships:

Staff Vice-president State Public Policy Verizon Wireless
 Managing Director State Public Policy, AirTouch Communications
 Of Counsel and Associate, Perkins Coie, LLP
 Board Member, United for Washington
 Summer Associate, Allen Matkins Leek Gamble and Mallory
 Summer Associate, Paul Hastings Janofsky and Walker
 President, Timberline Park Homeowners Association
 President, Pennington Homeowners Association

12. Memberships:

Plateau Golf Club, Sammamish, WA
 Washington State Bar Association
 Woodland Park Zoo, Seattle, WA
 Catholic Church
 University California Berkeley, Phi Beta Kappa Society
 Delta Upsilon Fraternity
 Pennington Homeowners Association
 Ocean Shores Community Club

13. Political affiliations and activities:

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate: None.
- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years: None.
- (c) Itemize all political contributions to any individual; campaign organization, political party, political action committee, or similar entity, of \$500 or more for the past 10 years: Bush for President on June 18, 1999.

14. Honors and awards:

Valedictorian, Saint Francis High School
 Phi Beta Kappa Society, UC Berkeley
 BA in Economics with Honors, UC Berkeley
 BA in Political Science with Honors, UC Berkeley

15. Published writings: None.

16. Speeches:

As Deputy Assistant Secretary of Commerce for Communications and Information, I have provided public remarks on dozens of occasions. Attached as Exhibit A are the speeches that have been published by NTIA.

17. Selection:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

I believe the President nominated me based upon my experience in the telecommunications industry, previous work as Congressional staff, and my direct experience and performance as Deputy Assistant Secretary for Communications and Information. That experience should provide a strong foundation for me to meet the challenges of the Assistant Secretary position.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

I have managed the National Telecommunications and Information Administration for nearly a year and a half. I fully understand the challenges, duties and responsibilities of the Assistant Secretary position. Moreover, I have been a senior member of the Administration team that has delivered several spectrum policy ad-

vancements to the American people, including the authorization of ultrawideband technology, the allocation of an additional 90 MHz of spectrum for advanced wireless services (3G), doubling the amount of spectrum for WiFi at 5 GHz, and most recently allocating 13 GHz of spectrum for unlicensed use in the 70, 80, and 90 GHz bands. Each of those policy advancements required working technically and professionally across a number of federal agencies to deliver an outcome authorizing a new technology without impairing critical incumbent systems. By working closely with Secretary Evans on key Administration policy issues, also understand the key elements that are required to advance a pro growth, pro-technology policy agenda.

As a former Administrative Assistant for a member of the House of Representatives, I have a firm understanding of and respect for the legislative process. Finally, my telecommunications experience in the private sector gives me a useful perspective of the impacts of regulation and government mandates on technology and growing businesses.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

I severed all connections with previous non-Government employers and business organizations and associations (except for continuing to maintain accounts in two prior employers 401(k) plans, as described in my answer to question C. 1) when I accepted my current appointment with the U.S. Department of Commerce in November 2001.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, please explain: No.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

I have continued to maintain accounts in 401(k) retirement plans sponsored by Perkins Coie, LLP and Verizon Wireless, both of which are former employers. My accounts are invested in diversified mutual funds and similar assets. Neither I nor either of my former employers has made contributions to these accounts since termination of my employment.

It is my understanding that the Office of General Counsel of the U.S. Department of Commerce (in consultation with the Office of Government Ethics and the White House Counsel's office) has certified that my Financial Disclosure Report (which lists my interests in these plans and the underlying assets) is complete and does not disclose any financial interest or outside activity that violates or appears to violate applicable conflict of interest laws or regulations.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Attached as Exhibit B is the agreement that I have entered into with the Department of Commerce to resolve any potential conflicts of interest that may arise. It is my understanding the Office of General Counsel of the U.S. Department of Commerce has found that this agreement resolves any potential conflicts of interest.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated: None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

Since my departure from Congressman White's office in 1997, my career has been entirely focused on public policy matters. As Of Counsel at Perkins Coie, I co-chaired the Government Relations practice group. While at Perkins Coie, I focused on the following public policy issues:

- Electricity deregulation legislation in Washington State
- Telecommunications regulation in Washington State
- Satellite issues before the U.S. House Commerce Committee
- Cable Broadband deployment in Seattle, WA

While at AirTouch Communications (which later merged with Bell Atlantic Mobile and became Verizon Wireless), I directed all state public policy legislative and regulatory activity for all 50 states. The primary issues I directed on behalf of the company included:

- Verizon Wireless “hands-free” driver safety legislation
- State and local taxation of wireless service
- Health Effects legislation
- Wireless E911 legislation and regulation
- State universal service funding
- Cell siting
- Uniform sourcing of wireless services for tax purposes
- Consumer protection legislation and regulation
- Numbering
- Priority access for wireless service
- Rights of way access

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

The Agreement attached as Exhibit 8 sets forth specifically how I intend to resolve any potential conflicts of interest. On a forward-looking basis, I intend to continue to consult with the ethics officials at the Department of Commerce and, if appropriate, divest myself of any new conflicting interests, recuse myself, or obtain a conflict of interest waiver under 18 U.S.C. § 208(b) if the interest is not substantial.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain.

Yes, I was the subject of a complaint to the Washington State Bar Association. In January 1997, Richard A. Labadie filed a grievance with the Washington State Bar Association against me and four other fellow Perkins Coie lawyers (WSBA file No. 9700186) for alleged violation of conflicts of interest relating to a bankruptcy case we were working on. Neither I nor any Perkins Coie lawyer was ever found to represent Mr. Labadie and the complaint was dismissed without hearing later that year.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain.

Yes. In August 1983, I was cited for possession of alcohol on a public beach, which in Huntington Beach, California, is a misdemeanor. I paid a small fine by mail and the matter was concluded without any further proceedings.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain: No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain.

Yes. In August 1983, I was cited for possession of alcohol on a public beach, which in Huntington Beach, California, is a misdemeanor. I paid a small fine by mail and the matter was concluded without any further proceedings.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Please explain how if confirmed, you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

If confirmed, I will review each regulatory action taken by NTIA to ensure it complies with all applicable legislative directives. Should clarification or interpretation of the regulation be required, I will consult with the agency's general counsel, the office of the general counsel of the Department of Commerce, the Office of Management and Budget, and interested Congressional offices, as appropriate. I intend to continue my practice of open and frequent communication between NTIA and Congress.

5. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experiences and education qualify you for the position for which you have been nominated?

I have managed the National Telecommunications and Information Administration for nearly a year and a half. I fully understand the challenges, duties and responsibilities of the Assistant Secretary position. Moreover, I have been a senior member of the Administration team that has delivered several spectrum policy advancements to the American people, including the authorization of ultrawideband technology, the allocation of an additional 90 MHz of spectrum for advanced wireless services (3G), doubling the amount of spectrum for WiFi at 5 GHz, and most recently allocating 13 GHz of spectrum for unlicensed use in the 70, 80, and 90 GHz bands. Each of those policy advancements required working technically and professionally across a number of Federal agencies to deliver an outcome authorizing a new technology without impairing critical incumbent systems. By working closely with Secretary Evans on key Administration policy issues, I also understand the key elements that are required to advance a pro-growth, pro technology policy agenda.

As a former Administrative Assistant for a member of the House of Representatives, I have a firm understanding of and respect for the legislative process. In addition, my telecommunications experience in the private sector gives me a useful perspective of the impacts of regulation and government mandates on technology and growing businesses.

My education is a strong foundation for government service. As a lawyer, I understand the impact and requirements of the law. As an economist, I understand the micro and macro economic impacts of government action and inaction. And, as a political scientist, I have a broad view of government structures, strengths and weaknesses through history.

2. Why do you wish to serve in the position for which you have been nominated?

Serving the American people is a privilege and an honor. Telecommunications is the foundation for our economy, and the power of free markets and technology drive the United States to its place as the economic and ideological engine of the world. My previous experience at NTIA, in the private sector, and as Congressional staff afford me the opportunity to make a powerful contribution to continue the leadership of our country in the dynamic fields of telecommunications and technology.

3. What goals have you established for your first two years in this position, if confirmed?

If confirmed, I believe the goals of the position are primarily to be responsive to the needs of the American people as expressed through their leaders—the President, the Secretary of Commerce, and the Congress. At the outset, I believe the primary goals of the position are:

Spectrum Policy:

—Continue to work in partnership with the FCC to manage our spectrum resources to maximize the dual goals of economic and national security

—Complete the work necessary to deliver the promise of ultrawideband, advanced wireless services (3G), and new WiFi services to the American people

—Deliver the action plan for spectrum policy improvement called for in the President's Spectrum Policy Initiative

Telecommunications Policy:

—Develop and advocate telecommunications policies that restore stability and growth to the U.S. telecommunications sector

—Develop and advocate policies that advance U.S. leadership in the creation and deployment of dynamic new technologies

International Leadership:

—Develop and advocate international telecommunications and spectrum policies in partnership with the FCC and the State Department that open up new markets for U.S. technological leadership around the world

Economic Stewardship:

—Effectively, efficiently, and ethically discharge the obligations of the office of Assistant Secretary

—Accomplish the goals of the office using the least amount of taxpayer resources

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

Having served as the Deputy Assistant Secretary, Acting Assistant Secretary and in a senior position in the Secretary's office, I feel I have the skills to carry out the position of Assistant Secretary. That said, in order to excel in the position, I expect to seek the guidance of senior Administration officials across the agencies, leverage the expertise of the Department of Commerce leadership team, and to frequently seek the guidance of leaders and senior staff in Congress.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe the role of government is well defined by the Constitution and its system of checks and balances. The Founding Fathers designed a system that is at the same time flexible and strong. During times of international uncertainty or war, our system calls for and accommodates a strong Executive Branch leadership role. During times of peace and international calm, the legislative branch assumes the stronger role. And, when the legislative and executive branches are in conflict or both are acting outside the fundamental rights granted to the people and the states, the judicial branch provides our Constitutional safety-net.

The government that governs least governs best. The private citizen and the private sector are the stakeholders and beneficiaries of our government. The Federal Government's role is derivative and subordinate to the rights of the individual. Unless demonstrably harmful to the fabric of society—and falling squarely within the powers granted by the Constitution—the government should not interfere with the private sector. However, where conduct is destructive to society (physically, economically, and in some cases morally), the Constitution allows the government to punish, restrain, or direct private sector conduct. In addition, the private sector has an obligation to fund the necessary operations of government through the taxation system.

Capitalism and free markets serve consumers and allocate resources more efficiently than centralized government. That said, markets serve society—not the other way around. The government should only rarely intervene in the market mechanism, for that interference will only harm society by misallocating resources or inhibiting the flow of capital. The government should intervene where there is market failure (geographic, externalities, etc.), or when private sector conduct is directly harmful to others' interests (economic, environmental, physical, etc.). Finally, there is a narrow role for government to advance national interests and international opportunities through trade and statesmanship. In many circumstances those interventions are justified and necessary to meet the call of national security and intelligence gathering.

Government programs should be created under only the narrowest of circumstances because our national experience is that eliminating any Federal program is extraordinarily difficult, resulting in waste of taxpayer resources and an inability to meet other national needs. That said, a government program should be eliminated under either of two sets of circumstances. First, if it has accomplished its mission or outlived its usefulness (that is, the goals are achieved or cir-

cumstances have changed such that the goals are no longer necessary). Second, is when national priorities and limited resources dictate that cuts be made in some programs to fund more critical needs.

6. Describe the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated.

NTIA is charged by statute to be the advisor the President and the Administration on telecommunications matters. In addition, it is the co-manager, with the FCC of the Nation's spectrum resource. It is the regulator of the use of the spectrum by Federal users. It also is the lead agency in administering the U.S. Government's contract with ICANN to manage the Internet domain name system.

7. What do you believe to be the top three challenges facing the department/agency and why?

(1) *Financial, technical, and regulatory instability.* Our telecommunications sector has moved from monopoly regulation to competition -the groundbreaking policy shift set forth in the 1996 Telecommunications Act. In that time it has also incurred tens of-billions-of dollars in new debt and seen an equity explosion that turned out to be the tech and telecom bubble. It is also the laggard sector coming out of economic recession. On top of those challenges, the pace of technological change in the computing, fiber-optic, and wireless industries continues to exponentially increase the efficiency of legacy and new equipment alike. Policy vision and advocacy are very difficult in the face of so many obstacles to clarity and uncertainty regarding the parameters of technical and financial equilibrium.

(2) *Ability to focus resources on efforts to determine technical truth.* We have made great progress in the management of the spectrum in the last two years. But, continued progress is fully dependent on technical, engineering truth and expertise. NTIA (and the FCC) must endeavor to ensure that available resources are sharply focused to fully test and develop models to answer the questions posed by recent technological breakthroughs.

(3) *Lack of understanding.* Many current NTIA personnel are not aware of lack full understanding of the technological and market forces that are daily impacting telecommunications and technology sectors. NTIA will be required to overcome resource, experience, and technical limitations, to render the policy judgments it will be called upon to make. To complicate matters, it will need to be particularly focused on retaining many of its most knowledgeable employees are eligible for retirement in the next 5 years.

8. In reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

As an initial matter, one has to acknowledge what has worked well in the past few years: spectrum policy. The strength of those efforts have flowed from leadership from the President, the Secretary of Commerce, and the Chairman of the FCC. In turn that leadership has been fostered by technical support and professional staff work. With that in mind, the following are the factors that limit NTIA's effectiveness:

Labor inflexibility. NTIA is very limited in its ability to hire the expertise necessary in a rapidly changing environment. A need may be immediate (and the hiring system does not accommodate those needs) or short term (largely incompatible with the civil service system).

Misallocation of resources. NTIA is not allowed to shift its resources to meet current demands because the resource focus is driven by historic demands (e.g., grant programs versus spectrum testing).

The plight of the telecommunications sector. The financial, technical, and regulatory instability of the telecommunications sector have limited policy vision at the same time that political acrimony has been at its height.

9. Who are the stakeholders in the work of this department/agency?

The primary stakeholders are the American consumer, the American investor, private sector spectrum users, Federal agency spectrum users, technology companies, and the all users of telecommunications services.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

The stakeholders are the primary generators of information and support for decisions. However, because decisions often impact some stakeholders favorably and others unfavorably, the Assistant Secretary must be impartial, technical and fair in resolving policy conflicts. If confirmed, I will be an impartial decisionmaker who takes the views of all stakeholders into account.

11. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your department/agency has proper management and accounting controls?

If confirmed, I will work to ensure NTIA complies with all of its financial obligations, including the Chief Financial Officers Act. My responsibility is to provide the leadership that prioritizes sound financial management, and to make sure adequate resources are provided to make sure NTIA meets its departmental goals.

(b) What experience do you have in managing a large organization?

I have run NTIA as the Deputy Assistant Secretary for 18 months, including the last 3 as Acting Assistant Secretary. I have also served as Deputy Chief of Staff for Policy to the Department of Commerce. Prior to joining the Administration, I was a senior executive at Verizon Wireless and ran an organization responsible for state regulatory and legislative public policy for all 50 states. And, I ran a Congressional office and managed its budget.

12. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) What benefits, if any, do you see in identifying performance goals and reporting on progress in achieving those goals?

Setting goals and reporting on progress achieves several sound management benefits including: focus on efficient use of resources; measurement of progress toward goals; and accountability.

(b) What steps should Congress consider taking when a department/agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing, or consolidation of departments and/or programs?

Ideally, an agency and Congress are in close enough communication that failure does not occur. However, if it does; then Congress must determine the reasons for the failure (*e.g.*, lack of leadership, lack of resources, change in circumstances, etc.). Typically those determinations are undertaken through the oversight process. And, yes, the steps of privatization, downsizing, and consolidation are certainly tools. However, given the obligation to make the government as efficient as possible at all times and high deficit levels, those tools may be appropriate at any time, including failure.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

If confirmed, I believe that my accountability should be measured by the effectiveness of my management of the spectrum in partnership with the FCC, the timeliness and the quality of my policy advice to the President and the Administration, my compliance with applicable laws, and my ability to effectively lead NTIA to meet the President's call to be "one united Administration serving the needs of the American people."

13. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

My philosophy of supervisor/employee relationships is one of leadership, trust and accountability. It is the supervisor's job to lead the agency. That means setting the course, providing the resources, setting priorities and making decisions. The employee's responsibility is to trust and support the directions of the supervisor, and to discharge their obligations in a professional and timely manner. And, if either fail, they stand accountable. I follow a supervisory model that fully empowers an employee to make all decisions within their authority, competence and experience requiring hands-on direction only when necessary. And, when initiatives are achieved and progress is outstanding, the employee is fully recognized for their role in bringing it about.

14. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

I believe my working relationship with Congress is very strong. I have worked on a number of issues including spectrum policy, Internet policy, and telecommunications policy with Members and staff. I have a strong appreciation for the importance and challenge of legislative work. Prior to joining NTIA, my primary source of Congressional experience was as Administrative Assistant to Congressman Rick White (WA-01), who was a member of the Energy and Commerce Committee. In that capacity, I worked extensively with House Commerce, House Leadership, and with Senate Commerce Committee staff on many legislative matters.

15. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

If confirmed, I would support the Inspector General and require all personnel in my organization to cooperate with any activities of the Inspector General's office.

16. In the areas under the department/agency's jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

If confirmed, I look forward to being responsive to the Administration's and Congress's legislative priorities. As a personal matter, several telecommunications and Internet issues should be priorities to Congress, including:

- Passing the Spectrum Relocation Trust Fund Legislation
- Passing legislative initiatives proposed as part of the President's Spectrum Policy Initiative (including authorizations to agencies to share in the benefits of improved spectrum management practices)
- Giving the FCC authority to levy market-oriented, efficiency enhancing spectrum fees on licensed spectrum users
- Passing legislation removing regulatory uncertainty in the wireline voice and broadband service markets

17. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending in an open manner through a set of fair and objective established criteria? If yes, please explain what steps you intend to take and a time frame for their implementation. If not, please explain why.

Yes. If confirmed, I will effectively participate in the Department of Commerce system that allocates discretionary spending based on national priorities, determined in an open manner and objective criteria. As required by the General Performance and Results Act, I will provide Congress, the Department of Commerce and the Executive Office of the President the data and analysis required to determine the appropriate allocation of resources to NTIA. Those efforts are already well under way for the 2005 Administration budget proposal. If confirmed, I intend to timely and professionally meet the information demands of the Administration and Congress in finalizing the 2005 budget, and developing the 2006 budget.

The CHAIRMAN. Thank you very much.
Ms. Halpern?

**STATEMENT OF CHERYL FELDMAN HALPERN, NOMINEE
TO BE A MEMBER OF THE BOARD OF DIRECTORS,
CORPORATION FOR PUBLIC BROADCASTING**

Ms. HALPERN. You'll forgive me if I'm not quite that succinct.

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today and discuss my nomination to the Board of Directors of the Corporation for Public Broadcasting. I am deeply grateful to the President for nominating me.

The Public Broadcasting Act, CPB's governing statute, sets a high standard for public broadcasting's performance. It charges CPB with providing universal services to all Americans, especially those underserved audiences, including children and minorities, with ensuring that program content be balanced, objective, and free from editorial bias, and with developing quality programmings reflecting the diversity, creativity, and accomplishments of American society and culture.

Recent technological developments, together with the financial and demographic changes that have impacted the media, have also created new challenges and opportunities for public broadcasting. Public television competes today in a broad, multichannel environment, while public radio faces an environment seeking increased consolidation. However, the technological advances, especially the Internet services, offer public broadcasting a new opportunity with which to reach and serve the American audience. The challenge to finance the production of programming that can be delivered effectively, using all methods of transmission, remains and expands when embracing these new technology advances.

Our Nation's commitment to education at a time when we are initiating what will be a prolonged war on terrorism reinforces the need, perhaps now more than ever, to broadcast the fundamental values and ideals that define America—freedom, the rule of law, tolerance, and respect. These are messages that commercial broadcasting does not prioritize. For commercial broadcasters, the audience is perceived as the advertiser's targeted consumer. For public broadcasters, the audience is perceived as citizens with a right to access news and information, as well as culture and the arts.

Much of the work in which I have been engaged has focused on communicating and educating children and adults, both domestically and abroad, about America and our way of life. As the national co-chairman of the character education program "Words Can Heal," I've introduced children, most recently in Los Angeles and Chicago, to the power of words. "Words Can Heal" effectively integrates school administrators, teachers, parents, and students, K-through-12, in a program that teaches not to verbally abuse one another and encourages the use of language that is civil, even when disagreeing.

Through my service on the board of the International Republican Institute, I have been privileged to visit and observe countries trying to build democracy. The establishment of working democratic systems is a slow and potentially painful process. The goal of democratic political stability continues to be challenged by the problems resulting from economic recession and from ethnic and national tensions. The free flow of information, together with education, is essential to the process. There exists a thirst for knowledge about democracy with an abundance of questions to be answered.

As a member of the board for International Broadcasting and, later, the Broadcasting Board of Governors, I was proud to be a part of an organization that effectively reaches and provides the meaningful answers about freedom and democracy to audiences around the world. I have learned much from my experiences with international broadcasting, and am grateful for the opportunity to have served. I will always remember the appreciation, expressed time and again, for the news and information that our U.S. Government-funded international broadcasting entities provided.

My year of service on the CPB board has made me aware of how important the dissemination of information is to our own young people. A recent survey of students at our Nation's top colleges found significant gaps in their knowledge of American history. Only about a third knew what the Emancipation Proclamation granted. Less than two thirds were able to say when the Civil War was fought, even within a 50-year time spread. This ignorance is unacceptable and needs to be addressed. We cannot successfully present America's case to the world unless we can define who we are, where we come from, why we believe as we do, and what we value.

Public broadcasting, with access to nearly a hundred percent of American homes, can reach these young people and educate them. Our goal is not merely to develop interesting programs, but to provide a meaningful impact so that many more young Americans will understand our Nation's history, learn to appreciate its principles, and assume civic responsibility. This is a way not only to perpet-

uate what we most treasure about America, but to assure continuity for the future.

As America faces the new challenges of today and looks toward the future, we are engaged in a debate over how America will define itself with respect to the rest of the world. Americans need to understand the evolving challenges to freedom, democracy, and the American way of life. The CPB hopes to present these and so many other timely and important issues with in-depth discussions by respected thinkers representing diverse points of view. The goal of this initiative goes beyond creating interesting and engaging programming. It will endeavor to inform and, thereby, encourage the inquiry and debate that is fundamental to our democratic process.

As President Madison so wisely noted, what spectacle can be more edifying or more seasonable than that of liberty and learning, each leaning on each other for their mutual and surest support?

Mr. Chairman, I believe that public broadcasting has a vital role to play in equipping Americans for their ever-changing role in the world. I look forward to being a part of this enterprise committed to communicating, educating, and sharing the precious messages embodied in the American experience.

Many thanks again for your invitation to appear here today. I'll be happy to answer any questions.

[The prepared statement and biographical information of Ms. Halpern follow:]

PREPARED STATEMENT OF CHERYL FELDMAN HALPERN, NOMINEE TO BE A MEMBER OF THE BOARD OF DIRECTORS, CORPORATION FOR PUBLIC BROADCASTING

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to discuss my nomination to the Board of Directors of the Corporation for Public Broadcasting. I am deeply grateful to the President for nominating me.

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Our Nation's commitment to education at a time when we are initiating what will be a prolonged war on terrorism reinforces the need—perhaps more than ever—to broadcast the fundamental values and ideals that define America: freedom, the rule of law, tolerance and respect. These are messages that commercial broadcasting does not prioritize. For commercial broadcasters the audience is perceived as the advertisers' targeted consumer. For public broadcasters, the audience is perceived as citizens with the right to access news and information as well as culture and the arts.

Much of the work in which I have been engaged has focused on communicating and educating children and adults, both domestically and abroad, about America and our way of life. As the National Co-Chairman of a character education program "Words Can Heal", I have introduced children, most recently in Los Angeles and Chicago, to the power of words. "Words Can Heal" effectively integrates school administrators, teachers, parents and students—K-12—in a program that teaches not

to verbally abuse one another and encourages the use of language that is civil, even when disagreeing.

Through my service on the Board of the International Republican Institute, I have been privileged to visit and observe countries trying to build democracy. There exists a thirst for knowledge about democracy with an abundance of questions to be answered.

As a member of the Board for International Broadcasting and later the Broadcasting Board of Governors, I was proud to be part of an organization that effectively reaches and provides answers to audiences around the world. I will always remember the appreciation expressed by so many for the news and information that our U.S. Government funded international broadcasting entities have provided.

My year of service on the CPB Board made me aware of how important the dissemination of information is to our own young people. A recent survey of students at our Nation's top colleges found significant gaps in their knowledge of American history. Only about a third knew what the Emancipation Proclamation granted. Less than two thirds were able to say when the Civil War was fought-even within a 50 year spread.

This ignorance is unacceptable and needs to be addressed. We can not make America's case to the world unless we can define who we are, where we came from, why we believe as we do and what we value. Public Broadcasting, with access to nearly 100 percent of American homes, can reach these young people and educate them. Our goal is not merely to develop interesting programs, but to provide a meaningful impact so that many more young Americans will understand our Nation's history, learn to appreciate its principles and assume civil responsibility. This is a way not only to perpetuate what we most treasure about America, but to assure continuity for the future.

As America faces a new and uncertain future, we are engaged in a debate over how America will define itself with respect to the rest of the world. Americans need to understand the evolving challenges to freedom, democracy and the American way of life. The CPB hopes to present these and so many other timely and important issues with in depth discussions by respected thinkers representing diverse points of view. The goal of the initiative goes beyond creating interesting and engaging programming. It will endeavor to inform and thereby encourage the inquiry and debate that is fundamental to our democratic process.

Mr. Chairman, I believe that public broadcasting has a vital role to play in equipping Americans for their ever changing role in the world. I look forward to being part of this enterprise. My thanks again for your invitation to appear here today. I am happy to answer any questions you may have.

CHERYL HALPERN

Cheryl Halpern was appointed to the CPB board by President Bush in August 2002. She holds a B.A. degree in political science from Barnard College of Columbia University, and an M.B.A. in finance from New York University. While living in New York City, she was associated with WKCR-FM, where she produced both news and classical music programs. Additionally, she has held an F.C.C. radio engineer's license.

In 1990, Halpern was confirmed as a member of the Board for International Broadcasting and as a director of Radio Free Europe/Radio Liberty. She is currently serving as a member of the Broadcasting Board of Governors with oversight responsibility for Voice of America, Radio and TV Marti, Radio Free Europe/Radio Liberty, Worldnet, Radio Free Asia, and Radio Free Iraq.

Halpern's wide range of civic involvement includes participation on the boards of the International Republican Institute, the Washington Institute for Near East Policy, and the Lexington Institute. She is the chair of the UN Advisory Council of B'nai B'rith International. Halpern is also the national chairperson of character education program for the Words Can Heal organization.

Halpern resides in New Jersey with her husband Fred.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nick names used.)

Cheryl Miriam Feldman Halpern.

2. Position to which nominated: Member of the Board of Directors for the Corporation For Public Broadcasting.

3. Date of nomination: On August 22, 2001, the President announced his intent to appoint. Recess appointment: August 6, 2002.

4. Address: (List current place of residence and office addresses.)
 Residence: Information not released to the public.
 Office: Corporation For Public Broadcasting, 1401 Ninth Street, N.W., Washington, D.C. 20004.
5. Date and place of birth: November 20, 1954; New Haven, Connecticut.
6. Marital status: (Include maiden name of wife or husband's name.)
 Married. Husband: Frederick Michael Halpern.
7. Names and ages of children: (Include stepchildren and children from previous marriages.)
 Yonina Halpern, age 23; Maeira Halpern, age 20; Alexander Halpern, age 17.
8. Education: (List secondary and higher education institutions, dates attended, degree received)
 Beth Chana Academy, 1968–1969.
 Richard C. Lee Public High School, 1969–1971.
 Barnard College, 1971–1975, B.A. 1975.
 NYU Graduate School of Business Administration, MBA Finance, 1980.
9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
 Member, Corporation For Public Broadcasting (08/02 to present)
 401 Ninth Street, N.W., Washington, DC 20004
 Member, FCYMA/H, LLC (09/00 through present)
 42 Rockledge Drive, Livingston, NJ 07039
 Member, Peppermint Spice, LLC (1998 through present)
 42 Rockledge Drive, Livingston, NJ 07039
 Manager, Mountain Ledge Investors, LLC (11/99 through present)
 42 Rockledge Drive, Livingston, NJ 07039
 Partner, Integrated CFH Associates, G.P. (04/92 through present)
 42 Rockledge Drive, Livingston, NJ 07039
 Member, Broadcasting Board of Governors (09/95 through 12/02)
 330 Independence Avenue, S.W., Room 3360, Washington, DC 20036
 President, CFYM Associates, Inc. (1984 through 1997)
 42 Rockledge Drive, Livingston, NJ 07039
 Secretary-Treasurer, Porcupine Enterprises, Inc. (05/88 through 1996)
 42 Rockledge Drive, Livingston, NJ 07039
 Partner, Then As Now, L.P. (12/88 through present)
 42 Rockledge Drive, Livingston, NJ 07039
 Member, Board for International Broadcasting (10/90 to 08/95)
 1–21 Connecticut Avenue, N.W., Suite 400, Washington, DC 20036
10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State or local governments, other than those listed above.)
 Member, NJ-Israel Commission.
11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)
 Corporation For Public Broadcasting—Member of Board
 International Republican Institute—Member of Board
 Integrated CFH Associates, G.P.—Partner
 Joseph Kushner Hebrew Academy—Member, Board of Education
 Washington Institute for Near East Policy—Trustee
 Anti-Defamation League of B'nai B'rith—Regional Board Member
 Community Relations Council, Metro West Jewish Foundation—Board Member
 NJ/Israel Commission—Board Member
 Then As Now, L.P.—General Partner
 Fred Halpern Children's Trust—Trustee
 Fred Halpern Irrevocable Trust—Trustee
 Mountainledge Investors, LLC—Manager

Republican Jewish Coalition—Honorary Chairman, Vice Chairman
 Bionexus Foundation*—Director
 Lexington Institute—Trustee
 F.C.Y.M.A./H., LLC—Member
 Peppermint Spice, LLC—Member
 B'nai B'rith International—Chairman, UN Affairs Committee, B'nai B'rith Center for Public Policy
 Words Can Heal—National Chairman, Character Education

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

International Republican Institute—Member of Board of Directors
 Republican Jewish Coalition—Honorary Chairman, Vice Chairman, National Chairman
 B'nai B'rith International—Chairman, UN Affairs Committee, B'nai B'rith Center for Public Policy
 Joseph Kushner Hebrew Academy—Member, Board of Education Board of Trustees
 Anti-Defamation League—Member, Regional Advisory Board
 Beaver Creek Club—Member
 Capitol Hill Club—Member
 Carnegie Club—Member
 N.J. Israel Commission—Member
 Lexington Institute—Board of Trustees Member
 Words Can Heal—National Chairman, Character Education
 Washington Institute for Near East Policy—Lifetime Trustee
 Business Executives for National Security
 National Committee on American Foreign Policy
 American Horse Shows Association—Life Member
 Central N.J. Home for the Aged—Life Member
 AMIT Women—Life Member
 Interparliamentary Council Against Anti-Semitism—International Advisory Board
 Yemenite Federation
 Metrowest Federation—Community Relations Council
 Holocaust Resource Foundation at Kean College—Young Leadership
 Simon Wiesenthal Center—Member
 Synagogue of The Suburban Torah Center
 Congregation B'Nai Vail
 B'Nai B'rith International—Life Member
 Essex County Ritualarium
 Barnard College Fund
 Congregation B'nai Joseph DME
 Institute of Semitic Studies, Princeton University
 Vail Valley Foundation
 A.I.P.A.C.
 J.I.N.S.A.
 Jewish National Fund
 A.R.M.D.I.
 Albert Einstein School of Medicine
 Yeshiva University
 CLAL
 Dorot
 Yad Vashem

* Inactive.

Rabbinical College of America
 N.C.S.Y.
 Orthodox Union
 Empower America
 Bikur Cholim of Rockland County
 Freedom House
 Stem College for Women of Yeshiva University, New York, New York
 United States Dressage Foundation
 United Jewish Appeal
 Jewish Policy Center
 Robin Hood Foundation
 The Actors Fund
 Broadway Cares/Equity Fights Aids
 United Cerebral Palsey
 UMDNJ Foundation for MS
 Children of Chernobyl
 Hillel Foundation
 Creative Coalition

I believe that the above accurately lists current memberships.

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

I have never run for public office. I have, however, served as the following:

Coalitions Chairman—N.J. Republican Party
 Member, Finance Committee—N.J. Republican Party

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Finance Committee—Whitman for Governor
 Advisor—Haytaian for Senate
 Commission for the Future of Republican Party N.J.
 Finance Committee Zimmer for Congress
 Member—Team 100
 Co-Chairman—National Jewish Campaign Committee—Bush '88
 Chairman—N.J. Jewish Campaign Committee for Bush '88
 Consultant—Peter Dawkins for Senate
 Consultant—James Courter for Governor
 Consultant—James Courter for Congress
 Member—Kemp Associates
 Member—N.J. Bush for President—Voter Inclusion Program
 Campaign Volunteer Joseph Lieberman for State Legislature
 Consultant—Assemblyman Bob Franks
 Consultant—Bob Franks for Congress
 Co-Chairman Jewish Americans for Franks, Senate Campaign
 Co-Chairman—Victory Planning Group, N.J. Republican Party
 Trustee—N.J. Governor's Club
 Honorary Chairman—Republican Jewish Coalition
 Advisor—Congressman Mike Ferguson
 Advisor—Congressman Eric Cantor
 Member—National Republican Senatorial Committee
 Finance Committee—Bush for President 2000

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

1992

Friends of Bruce Herschensohn	\$1,000.00
Friends of Lee Solomon	\$1,000.00
AIPAC	\$1,000.00
Friends of Dean Gallo	\$1,500.00
Victory '92	\$2,000.00
AIPAC	\$1,000.00
Lieberman Committee	\$500.00
AIPAC	\$1,000.00
Friends of Bob Franks	\$2,000.00
Jack Kemp for President '88 Debt Retirement	\$1,000.00
Friends of Christie Whitman	\$3,000.00
	(together with spouse)
RNSEC	\$2,400.00
Convention '92 RSC	\$590.00
N.J. RSC	\$250.00 + \$250.00
N.J. Republican Party	\$1,370.87

1993

Friends of Bob Littel	\$500.00
Friends of Christie Whitman	\$600.00
Bob Martin Election Fund	\$500.00
Assembly Republican Majority	\$1,000.00
Friends of Clayton Fong	\$500.00
Friends of Bobbie Kilberg	\$1,000.00
Garden State PAC	\$500.00
Linsenberg for Controller	\$500.00
AIPAC	\$1,000.00
Franks for Congress	\$1,000.00
Friends of Bob Bennett	\$1,000.00
Friends of Trent Lott	\$1,000.00
Zimmer for Congress	\$1,000.00
N.J. Republican State Committee	\$1,000.00

1994

Friends of John Ashcroft	\$1,000.00
Friends of Olympia Snowe	\$500.00
Friends of Pete Wilson	\$1,000.00
Friends of Bill Brock	\$500.00
Friends of Bob Franks	\$500.00
	(together with spouse)
Friends of Spence Abraham	\$1,000.00
Friends of Chuck Haytaian	\$500.00 + \$ 200.00
NATPAC	\$1,000.00

1995

Friends of Bob Dole	\$2,000.00
Friends of Bob Franks	\$1,000.00
AIPAC	\$500.00
Friends of Dick Zimmer	\$1,000.00
Friends of Pete Wilson	\$1,000.00
Forbes for President	\$1,000.00
Friends of Al D'Amato	\$1,000.00
Friends of Arlen Specter	\$500.00

1996

NJRSC (State Account)	\$12,500.00 + \$ 200.00
Victory '96	\$500.00
Gary Pollard	\$500.00
NY Salute '96 Non-Federal	\$10,000.00
Friends of Nancy Mayer	\$ 500.00
Friends of Jesse Helms	\$500.00
Friends of Phil Gramm	\$500.00
Friends of Larry Pressler	\$500.00
Franks for Congress	\$1,000.00
Friends of Frelinghuysen	\$1,000.00
Friends of Rudy Boschwitz	\$1,000.00
Fox for Congress	\$1,000.00
Schiff for Congress	\$1,000.00
Alexander for President	\$1,000.00
RNSEC	\$10,000.00
NAT PAC	\$1,000.00

Victory '97	\$1,000.00
Franks for Congress	\$1,000.00
Friends of Kit Bond	\$1,000.00
Fox for Congress	\$1,000.00
Whitman for Governor \$1,000.00 + \$200.00	
RNSEC	\$25,000.00
<i>1998</i>	
RN SEC	\$25,000.00
Missouri Republican Party	\$1,000.00
Gisele Stavert for Congress	\$1,000.00 + \$1,000.00
Lundgren for Governor	\$1,000.00
Friends of Rodney Frelinghuysen	\$1,000.00 + \$1,000.00
Friends of Bob Franks	\$2,000.00
Joel Weingarten Election Fund	\$500.00
Mike Ferguson for Congress	\$500.00
Americans for Hope, Growth & Opportunity	\$1,000.00
Republican Leadership Council	\$500.00
Sam Brownback for Senate	\$1,000.00
Voinovich for Senate	\$1,000.00
Ensign for Senate	\$1,000.00
Coverdell Good Government Committee	\$1,000.00
Citizens for Arlen Specter	\$1,000.00
<i>1999</i>	
Friends of Joe Lieberman For Senate	\$1,000.00
Celebration 2000	\$1,000.00
Whitman for Senate	\$1,000.00 + \$1,000.00
Bush for President	\$1,000.00
Bush-Cheney 2000 Compliance Committee	\$1,000.00
Weingarten for Congress	\$1,000.00
Bob Franks for Senate	\$1,000.00 + \$1,000.00
Zimmer 2000	\$2,000.00
1999 NJ State Republican Victory Fund	\$5,000.00
New Republican Majority Fund	\$1,000.00
Trent Lott for Mississippi	\$1,000.00
<i>2000</i>	
Ferguson for Congress	\$1,000.00
Zimmer 2000	\$1,000.00
New Birth Freedom PAC	\$1,000.00
RN SEC	\$28,600.00
Friends of Olympia Snowe	\$1,000.00
Cantor for Congress	\$1,000.00
Friends of Jim Saxton	\$1,000.00
Burris Governor 2000	\$1,200.00
Friends of Senator Kyl	\$1,000.00
<i>2001</i>	
Senate Republican Majority	\$1,000.00
Senator Kyrillos Committee	\$1,000.00
Election Fund Paul DiGaetano	\$500.00
Di Francesco for Governor	\$5,200.00
	(together with spouse)
NRSC Non-Federal Account	\$10,000.00
Friends of Bob Franks	\$5,200.00
	(together with spouse)
AIPAC	\$500.00
Friends of Tom Kean, Jr.	\$2,200.00
Friends of Sam Brownback	\$2,000.00
Friends of Mike Ferguson	\$1,000.00
N.J. Republican State Committee	\$5,000.00 + \$5,000.00
<i>2002</i>	
Soaries for Congress	\$1,000.00
Friends of Mike Ferguson	\$1,000.00
Friends of John Cornyn	\$1,000.00
Friends of Bob Martin	\$200.00 + \$500.00
Republican Party of L.A.	\$500.00
N.J.R.S.C.	\$1,000.00
Friends of Diane Allen	\$2,000.00
Friends of Joe Kyrillos	\$1,000.00
Friends of Gary Pollard	\$500.00
Friends of Forrester for Senate	\$4,000.00
	(together with spouse)
Friends of Joe Biden	\$1,000.00
American Spirit—PAC	\$1,000.00

America's Foundation f/k/a Fight—PAC	\$5,000.00
Friends of Linda Lingle	\$6,000.00

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

State of Connecticut Scholar; Mortgage Bankers' Association Award for Graduate Study;

NYC Police Department Auxiliary Police Scholastic Achievement Award.

Certificate of Appreciation and Achievement, Broadcasting Board of Governors.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

"Energy Security Is Our National Responsibility", by Cheryl Halpern and Michael Epstein, Washington Jewish Week, on-line edition 3/17/02;

"Our Energy Security Is Our National Responsibility", by Cheryl Halpern and Michael Epstein, New Jersey Jewish News, 3/14/02

"Azerbaijan's Support The Kind That Muslim States Should Emulate", by Cheryl Halpern and Jason Epstein, New Jersey Jewish News, 11/08/01

"Encouraging Muslim Moderation", by Cheryl Halpern and Jason Epstein, Forward, 11/16/01

"Bush, Goldsmith And The Faith-Based Policy" Letter to Editor, Forward (2/16/01)

"Bush Offers Fresh Start, New Promise For Education", by Cheryl Halpern and Matthew Brooks, N.J. Jewish News (2/1/01)

"50th Anniversary Of Voice Of America Transmission From Tangier, Morocco" Speech (3/8/00)

"Put Syria Back On Drug List" Letter to Editor, Jewish Voice (December 1997)
Testimony before N.J. State Assembly Committee on The Judiciary, in capacity as National Chairman of National Jewish Coalition regarding the N.J. Religious Freedom Restoration Act (11/16/97)

"School Vouchers Give Parents More Power To Choose", by Cheryl Halpern and Matthew Brooks, N.J. Jewish News (10/16/97)

"Look Again-President Clinton Is No Friend Of Israel", by Max Fisher, Cheryl Halpern and Matthew Brooks, The Jewish News (4/3/97)

"The Republicans' Actions Speak Louder Than Words", by Max Fisher and Cheryl Halpern, Washington Jewish Week (10/11/96)

Salute To The Republican Congress-Speech (8/14/96)

"Nevertheless", Letter to the Editor, Washington Jewish Week (1/26/96)

"In Congress Jews Should Trust The Republicans", by Richard Fox, Cheryl Halpern and Sheldon Kamins, The Jewish News (10/17/96)

Women's Rights: A Perspective On Beijing Conference (11/15/95)

"Jewish Community Should Effect Change", "Swing To GOP?", by Max Fisher and Cheryl Halpern (10/94)

"Reflections On The Accord", NJC Bulletin (9/93, 10/93)

"Convention Was A Great Success In Eyes Of Jewish Republicans", by Cliff Sobel and Cheryl Halpern, The Jewish News (8/92)

"George Bush Kept Promises, Has Been Tested In Crisis", by Max Fisher, George Klein & Cheryl Halpern, The Jewish Standard, The Jewish News (10/92)

"In Praise of Quayle", by Cheryl Halpern and Elliot Felig, Letter to Editor, The Jewish News (5/89)

"Dodd & Weicker Should Stop Meddling In The Israel Issue", Letter to Editor, New Haven Register (4/88)

16. Speeches: (Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.)

Excerpt from transcript—"International Broadcasting: Its Mission, Budget And Future" (attached as Exhibit "A")

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I believe that I was selected for this position because of my experience over the last 11 years in government funded broadcasting.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

In 1990 I was nominated by President Bush and confirmed by the Senate to serve on the Board for International Broadcasting (the "BIB"). In 1995, when the BIB ceased to exist due to congressional legislation, I was the only carryforward to serve on the Broadcasting Board of Governors. I was subsequently renominated by President Clinton and confirmed by the Senate. I am confident that my experience with the board responsible for providing non-commercial programming for diverse international audiences, especially youth, for the past 11 years will be beneficial to the board serving the multi-cultural American audience.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

Not Applicable. Appointment is for 60-day Board position.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Not Applicable. Appointment is for 60-day Board position.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Not Applicable. Appointment is for 60-day Board position.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Not Applicable. Appointment is for 60-day Board position.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I have no "financial arrangements" other than my employment listed in A(9) and (11) above and my assets (and the financial benefits therefrom) listed in response to G(1) below.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None to my knowledge.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated?

None to my knowledge.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

As National Chairman of the Republican Jewish Coalition I encouraged and supported legislation that was of concern to the Jewish community. As a member of the Broadcasting Board of Governors I encouraged support for international broadcasting.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

If I become aware of a potential conflict of interest, I immediately will consult with the counsel to the Corporation For Public Broadcasting and any other assigned ethics officer and will take appropriate steps to address the conflict issue in a manner completely satisfactory to counsel and the ethics officer.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details.

I was a plaintiff in the *C.F.Y.M. Associates, Inc., a New Jersey Corporation and Cheryl Halpern v. Andrew Philbrick d/b/a Hunter Farms, Ltd. and Cynthia Webber* matter, Civil Action No. 87-2713 (REC), United States District Court for the District of New Jersey, commenced July 8, 1987; resolved by entry of Stipulation and Order of Settlement on September 25, 1987 and Supplemental Stipulation and Order of Settlement on October 23, 1987.

I was a defendant in *Ernest E. Pell v. RFE/RC, Inc., et al*, Civil Action No. 94-2290 JR, United States District Court for the District of Columbia, dismissed as against me by Order filed March 26, 1995.

4. Have you ever been convicted (including please of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I believe that my international broadcasting experience and my proven ability to work on a bipartisan basis over several administrations (Bush, Clinton and now Bush) is worthy of this Honorable Committee's attention.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information?

Yes. If confirmed, I will work with the Board and CPB staff to ensure that all CPB reports, and other requests for information, are delivered in a timely fashion.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

Yes. If confirmed, I will work with the Board and CPB staff to ensure that any congressional witnesses and whistleblowers are protected from reprisals.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee?

Yes. If confirmed, I will work with the Board and CPB staff to ensure that Committee requests for witnesses are honored.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualifies you for the position for which you have been nominated.

I believe that I was selected for this position because of my experience over the last 11 years in government funded broadcasting. In 1990, I was nominated by President Bush and confirmed by the Senate to serve on the Board for International Broadcasting (the "BIB"). In 1995, when the BIB ceased to exist due to congressional legislation, I was the only carryforward to serve on the Broadcasting Board of Governors. I was subsequently renominated by President Clinton and confirmed by the Senate. I am confident that my experience with the board responsible for providing non-commercial programming for diverse international audiences, especially youth, for the past 11 years will be beneficial to the CPB board in serving the multi-cultural American audience.

2. Why do you wish to serve in the position for which you have been nominated?

I believe that there needs to be a balanced, non-commercial public broadcasting presence on both radio and television that will provide programming for the entire spectrum of American society. It will be an honor to serve on the Corporation For Public Broadcasting and help to continue to bring this to fruition.

3. What goals have you established for your first two years in this position, if confirmed?

I look forward to working together with my fellow Board Members towards providing greater programming for children and towards integrating digital technology.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

Digital technology is ever changing. I would hope to continue to be brought up to date by professionals, as was the case on the Broadcasting Board of Governors.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

In the context of broadcasting, government should serve to foster and support accuracy and balance in content, and innovation and integrity in format. Government should err on the side of restraint in its dealings with the private sector, balancing its policy goals with the ideals of a free society. A government program which fails consistently to achieve its objectives in a cost-effective manner should be the subject of review.

6. Describe your department/agency's current mission, major programs, and major operational objectives.

CPB is not a Federal agency, but its mission is based in its authorizing statute: "to encourage the development of public radio and television broadcasting including the use of such media for instructional, educational, and cultural purposes," and "to encourage the growth and development of non-broadcast telecommunications technologies . . ." for similar purposes. CPB distributes Federal funds and provides a variety of other support to more than 1,000 public television and radio stations throughout the country. CPB is committed to funding programs and services that inform, enlighten and enrich the public. CPB is dedicated to encouraging the development of programming that involves creative risks and addresses the needs of unserved and underserved audiences, including children and minorities.

7. What do you believe to be the three challenges facing the board/commission and why?

The CPB faces significant challenges as it continues to meet the goals set by the Public Broadcasting Act. Among these are:

- (i) Strengthening the Public Broadcasting System's financial situation. Ensuring a firm financial footing is critical if Public Broadcasting is to offer the programming and services that our Nation deserves and demands.
- (ii) Realizing the tremendous potential afforded by the new digital technologies.
- (iii) Ensuring that public broadcast programming is responsive to local needs and addresses national concerns in an objective and balanced manner without compromising its editorial independence.

8. In reference to question number six, what factors in your opinion have kept the board/Commission from achieving its missions over the past several years?

While I do not agree that the CPB has failed in achieving its missions, it has faced obstacles limiting its success. No factor has proven a greater constraint than the lack of adequate funding. This is a time of dramatic technological change.

- (i) Television stations are struggling to raise the funds needed to meet the Government mandate to convert to digital transmission technology, and radio stations will soon face a "marketplace mandate" of their own.
- (ii) Television's interconnection system—the backbone of the distribution network—is due for replacement, and should be upgraded to take advantage of the opportunities offered by new technology.
- (iii) Both TV and radio will need to develop programming to obtain the full benefit of these new capabilities.

At this time of increasing cost demands, stations have found raising funds from sources other than the Federal Government challenging. Public Broadcasting competes with a range of other non-profit community service organizations for support from charitable foundations, individual contributors and corporate underwriting dollars that have become less available in the current environment. State governments, another major source of funding, are struggling with their own budgetary problems.

In this context, the Federal appropriation becomes more important than ever. Although Federal dollars account for only about 15 percent of the total system revenues, they are a vital and stable source of funding. Preservation of CPB's advance appropriation is particularly crucial in providing broadcasters and producers the

certainly they need to plan award-winning programming and to attract non-government funding.

9. Who are the stakeholders in the work of this agency?

The stakeholders are the American people, including the Congress, educators, public broadcasting stations, parents, students, and the unserved/underserved audiences such as children and minorities as prescribed by the statute.

10. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number nine?

If confirmed, I will hold a position of trust. I would represent the interests and needs of all stakeholders. When those interests and needs conflict, I would do my utmost to look objectively at all sides.

11. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

The position for which I have been nominated is one of oversight, not direct personnel management. In general, however, my philosophy is that we are all responsible for our actions within our scope of authority. I believe a Board Member's role is to provide vision, goals and priorities for supervisors to carry out. Open lines of communication, and accountability ensure successful relationships.

12. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

As a member of the Broadcasting Board of Governors I have worked with both the Senate Committee on Foreign Relations and the House Committee on International Relations.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

One of the most pressing legislative needs facing the public broadcasting community is efficient and timely transition from analog to digital broadcasting. Other priorities include ensuring universal access for all Americans as the various technologies and platforms evolve. Congress should continue to provide adequate funding to insure that the Corporation's technological capability keeps pace with the digital age, so that the public may be served.

14. Please discuss your views on the appropriate relationship between a voting member of an Independent board or commission and the wishes of a particular president.

I am very grateful to be given this opportunity to serve the American public. If confirmed, I will be guided by the provisions of the Public Broadcasting Act in carrying out my responsibilities.

The CHAIRMAN. Thank you.

Ms. Courtney, Senator Breaux wanted to be here to introduce you. As you know, he's a friend and supporter, and his statement will be included in the record as support for your nomination.

Welcome.

[The prepared statement of Senator Breaux follows:]

INTRODUCTION OF BETH COURTNEY BY HON. JOHN BREAUX

It is my great pleasure to introduce Beth Courtney, nominee for the Board of Directors of the Corporation for Public Broadcasting. Ms. Courtney currently serves as President and Chief Executive Officer of Louisiana Public Broadcasting, where she has been a skillful leader. Her extensive broadcasting experience, along with the support she enjoys from Louisianians will be a great asset to her as a board member. I enthusiastically support Ms. Courtney and urge the Senate to swiftly confirm her.

After graduating with a Bachelor's degree in History and Speech, Beth earned her Master's degree in European History and Government from Louisiana State University. She also received an Honorary Doctorate from Southeastern Louisiana University.

Ms. Courtney is Past Chairman of the Board of America's Public Television Stations (APTS) and former Vice Chairman of the Board of the Public Broadcasting Service (PBS). She is co-chairman of a PBS/APTS initiative to negotiate carriage of public broadcasting channels on digital cable and direct broadcast satellites. Ms. Courtney has also chaired the PBS education, membership and common carriage task forces.

Beth Courtney started her career in broadcasting as a Capitol Correspondent. She was named Communicator of the Year in 1984, elected Broadcaster of the Year by American Women in Radio & Television (AWRT) in 1988, and was one of the YWCA's Women of Achievement in 1991. Ms. Courtney was inducted into the Louisiana Center for Women in Government Hall of Fame in 1999.

Ms. Courtney has testified before Congress on numerous occasions, including the House Appropriations and Commerce Committees. She has shared her expertise as a broadcasting professional on numerous telecommunications technology advisory committees on local, state and national levels.

Beth is a highly regarded and admired individual in Louisiana. She has earned the respect of her colleagues in the broadcasting industry, not only in Louisiana but throughout the country. She is very active in her community, which has made her well respected both personally and professionally. She is married to Bob Courtney, President of Courtney Communications. Her daughter Julia is an attorney.

I commend the President for putting forth her nomination and believe she will make an excellent board member.

STATEMENT OF ELIZABETH COURTNEY, PRESIDENT AND CEO, LOUISIANA PUBLIC BROADCASTING

Ms. COURTNEY. Thank you, Senator.

Good morning again, Mr. Chairman and Members of the Committee. It's an honor to appear before you today. I'd like to thank the President for nominating me to serve on the Board of Directors of the Corporation for Public Broadcasting.

I would also like to express my gratitude for all those who supported my nomination, especially those from my home state of Louisiana. It has been my privilege and pleasure to work most of my adult life in public broadcasting. Growing up in a military family, we moved frequently, but we always knew that Louisiana was home. And when I had the opportunity to help start a new public television network in Baton Rouge, Louisiana, I enthusiastically agreed. We began in the basement of the State Department of Education in 1976, and today we operate multiple analog and digital stations across the state. New technology that has been spoken of in earlier testimony today has allowed us to provide Internet services to schools as well as direct satellite instruction.

I remain committed to the incredible power of this medium to teach. I have seen it make a difference in the lives of our citizens. My colleagues in public television have afforded me the opportunity to represent them on numerous boards. I have served as Vice Chairman of the Board of PBS and Chairman of the Board of the Association of Public Television Stations.

The people involved in this enterprise are passionate and dedicated public servants. We are not perfect. This is a difficult time for all of us. The digital conversion costs are staggering, especially in a nonprofit world. But we have managed to chart a course that will combine both public and private funds to meet that challenge. We also operate in a multichannel environment that was not there when I began in 1976, but I will say, with great conviction, that we are needed more than ever in each community we serve.

In Louisiana, we've just completed a six-part series on the history of our state released this year to coincide with the 200th anniversary of the Louisiana Purchase. It includes a book, teacher's guide, website, many outreach activities, including a statewide history bee. This was the last project that Dr. Steven Ambrose was involved in before his death. He's the on-camera host and we've

captured for all time his excellent teaching. He does the introduction of the book, and this is something, I think, that will be a treasure for our citizens. It's not a one-time television program or a series broadcast from a remote location across the country. This is a local service for a local community. My effort is repeated every day by the public television stations in your communities.

On the national level, we can share our best efforts with audiences across the United States. My inspiration for our history series came from a young producer who visited me in the early 1980s. We helped him produce a documentary on Huey Long. That producer was Ken Burns, and, of course, he went on to present on PBS his landmark series on the Civil War, baseball, and jazz. We remain in touch, and I look every day for that next young producer who can so enrich our lives. Local public television stations have a responsibility to nurture that creativity.

We also tackled difficult subjects that should be explored. This week, NOVA presented "The Elegant Universe." I'm a history major, but even I tried to understand String Theory and the theory of everything. This is science and continuing education at its very best.

It's in the area of news and public affairs that I think we can make an even greater contribution. This past Sunday—in fact, I was on C-SPAN last night, I think—I moderated a statewide debate between our gubernatorial candidates. This was just one program in an ongoing series of debates and political forums taking place across this country on public television and public radio stations, intelligent discourse and in-depth reporting sorely needed in the political process.

Louisiana has had its share of colorful politics, and Louisiana public broadcasting has always had the reputation of fair, balanced, and accurate reporting. Public television and public radio should be an oasis for complex and difficult stories in a complicated world.

We should also guard jealously our safe haven for children. This commitment to noncommercial and nonviolent children's programming is at the heart of our mission. I can testify firsthand about the measurable differences made in the lives of children because of programs such as *Ready to Learn*, *Arthur*, *Clifford*, and *Big Bird* are familiar names to your children and grandchildren, but a lifeline for the many children living in poverty in my state.

Thank you for allowing me to share a few of my thoughts on an institution that I feel is vital to this country. If you give me the privilege of serving on the Corporation for Public Broadcasting's Board of Directors, I will do my best to see that we are good custodians of public funds and public airways. I will welcome your suggestions and gladly report our progress.

I thank you for the opportunity to testify. I'm a fortunate person to be able to serve in a job that I love and be given the opportunity to make a difference in the lives of those around me. My 90-year-old father, who's a retired Air Force general, and my brother, who is an assistant U.S. attorney in San Diego, and here with me today, have both taught me much about the importance of public service. I hope you will consider giving me the opportunity to offer my service to the Corporation.

Thank you.
 [The prepared statement and biographical information of Ms. Courtney follow:]

PREPARED STATEMENT OF ELIZABETH (BETH) COURTNEY, PRESIDENT AND CEO,
 LOUISIANA PUBLIC BROADCASTING

Good Morning Mr. Chairman and Members of the Committee. It is an honor to appear before you today. I would like to thank the President for nominating me to serve on the Board of Directors for the Corporation for Public Broadcasting. I would also like to express my gratitude for all of those who supported my nomination, especially those from my home state of Louisiana.

It has been my privilege and pleasure to work most of my adult life in Public Broadcasting. Growing up in a military family, we moved frequently, but we always knew that Louisiana was home and when I had the opportunity to help start a new public television network in Baton Rouge, I enthusiastically agreed. We began in the basement of the State Department of Education in 1976 and today we operate multiple analog and digital stations across the state. New technology has allowed us to provide Internet services to schools as well as direct satellite instruction. I remain committed to the incredible power of this medium to teach. I have seen it make a difference in the lives of our citizens.

My colleagues in public television have afforded me the opportunity to represent them on numerous boards. I have served as Vice Chairman of the Board of PBS and Chairman of the Board of the Association of Public Television Stations (APTS). The people involved in the enterprise are passionate and dedicated public servants. We are not perfect. This is a difficult time for all of us. The digital conversion costs are staggering in a nonprofit world, but we have managed to chart a course that will combine both public and private funds to meet that challenge. We also operate in a multi-channel environment that was not there when I began in 1976. But I will say with great conviction that we are needed more than ever in each community we serve. In Louisiana, we have just completed a six part series on the history of our state. Released this year to coincide with the 200th anniversary of the Louisiana Purchase, it includes a book, teacher's guide, website, and many outreach activities including a statewide history bee. This is not a one time television program or series broadcast from a remote location across the country. This is a local service for a local community. My effort is repeated every day by the public television stations in your communities.

On the national level, we can share our best efforts with audiences across the United States. My inspiration for our history series came from a young producer who visited me in the early 80s. We helped him produce a documentary on Huey Long. That producer was Ken Bums and of course he went on to present on PBS his landmark series on the Civil War, Baseball, and Jazz. We remain in touch and I look every day for that next young producer who can so enrich our lives. Local public television stations have a responsibility to nurture creativity. We also tackle difficult subjects that should be explored. This week NOVA presented *The Elegant Universe*. I am a history major but even I tried to understand String Theory and the theory of everything. This is science and continuing education at its very best.

It is in the area of news and public affairs that I think we can make an even greater contribution. This past Sunday I moderated a statewide debate between our gubernatorial candidates. This was just one program in an ongoing series of debates and political forums taking place across this country on public television and radio stations. Intelligent discourse and in depth reporting is sorely needed in the political process. Louisiana has had its share of colorful politics and Louisiana Public Broadcasting has always had the reputation of fair, balanced and accurate reporting. Public television and public radio should be an oasis for complex and difficult stories in a complicated world.

We should also guard jealousy our safe haven for children. This commitment to noncommercial and nonviolent children's programming is at the heart of our mission. I can testify first hand about the measurable differences made in the lives of children because of the reading program, *Ready to Learn*. *Arthur*, *Clifford*, and *Big Bird* are familiar names to your children and grandchildren, but a lifeline for the many children living in poverty in my state.

Thank you for allowing me to share a few of my thoughts on an institution that I feel is vital to this country. If you give me the privilege of serving on the Corporation for Public Broadcasting Board of Directors, I will do my best to see that we are good custodians of public funds and public airways. I will welcome your suggestions and gladly report our progress. I thank you for the opportunity to testify. I

am a fortunate person to be able to serve in a job that I love and to be given the opportunity to make a difference in the lives of those around me. My ninety year old father who is a retired Air Force General, and my brother who is an assistant U.S. Attorney in San Diego and here with me today, have both taught me much about the importance of public service. I hope you will consider giving me the opportunity to offer my service to the Corporation for Public Broadcasting. Thank you.

BETH COURTNEY

Beth Courtney is President and CEO of Louisiana Public Broadcasting (LPB), which includes a statewide public television network with stations in Shreveport, Monroe, Alexandria, Lafayette, Lake Charles, Baton Rouge and an affiliated station in New Orleans. LPB is also responsible for the support and development of public radio throughout Louisiana and serves as the state's educational technology resource center.

She is Past Chairman of the Board of America's Public Television Stations (APTS) and former Vice Chairman of the Board of the Public Broadcasting Service (PBS). She is co-chairman of a PBS/APTS Board initiative to negotiate carriage of public broadcasting channels on digital cable and direct broadcast satellites. Ms. Courtney has chaired the PBS education, membership, and common carriage task forces. She currently serves on the Board Satellite Educational Resources Consortium (SERC), the Board of the Organization of State Broadcasting Executives (OSBE), the National Forum for Public Television Executives (NFPE) and the National Educational Telecommunications Association (NETA).

Ms. Courtney has testified before Congress on numerous occasions, including the House Appropriations and Commerce Committees, as an advocate and spokesperson for public broadcasting. She has appeared on William F. Buckley's *Firing Line*, CBS' *Sunday Morning*, CNN's *Crossfire*, and the *Freedom Forum*. She shared her expertise as a broadcasting professional on numerous telecommunications technology advisory committees on national, state and local levels.

Ms. Courtney has a BS in History & Speech and an MA in European History and Government from Louisiana State University, an Honorary Doctorate from Southeastern Louisiana University, and she completed UC/Berkeley's course in public broadcasting management. Prior to her appointment as CEO of LPB in 1985, she was LPB's Executive Producer. During her tenure numerous award-winning programs were produced and aired statewide; some aired nationally and internationally.

Ms. Courtney started her career in broadcasting as a Capitol Correspondent, reporting on state government and moderating numerous political debates. She was named Communicator of the Year in 1984, elected Broadcaster of the Year by American Women in Radio & Television (AWRT) in 1988, and was one of the YWCA's Women of Achievement in 1991. Ms. Courtney was inducted into the Louisiana Center for Women in Government Hall of Fame in 1999. She is active in many community and civic organizations, including Rotary, the Public Affairs Research Council of Louisiana, Inc. (PAR), Baton Rouge Local Organizing Committee, Inc. Senior Olympics (BRLOC), Jr. League Advisory Board, Leadership Louisiana and is Vice-Chairman of the WLAE Board. She is a member and past president of the Baton Rouge Press Club, a member of the State Technology Advisory committee and a member of the Women's Network.

In addition to her administrative duties, Ms. Courtney hosts the Annual Louisiana Young Heroes Awards, is the emcee of the Louisiana Legends Gala and recently co-hosted an award winning call-in program on breast cancer.

Ms. Courtney was also honored by the National D-Day Museum for her work both behind the scenes and as co-host of the three-hour live program "Louisiana Honors Its Veterans" which celebrated the contributions of the state's World War II veterans and the opening of the National D-Day Museum.

Ms. Courtney is married to Bob Courtney, President of Courtney Communications. Her daughter, Julia is an attorney.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nick names used): Elizabeth (Beth) Hardy Courtney.
2. Position to which nominated: Corporation for Public Broadcasting, member, Board of Directors.
3. Date of nomination: March 20, 2003.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: Louisiana Public Broadcasting, 7733 Perkins Road, Baton Rouge, Louisiana 70810.

5. Date and place of birth: May 15, 1945; Shreveport, Louisiana.

6. Marital status (Include maiden name of wife or husband's name):
married to Robert Louis Courtney.

7. Names and ages of children (Include stepchildren and children from previous marriages):

Julia George Moore (33) daughter; Audrey Courtney (33) stepdaughter; Jason Courtney (31) stepson; Joel Courtney (26) stepson; Christopher Courtney (24) stepson.

8. Education (List secondary and higher education institutions, dates attended, degree received):

Louisiana State University—B.S. 1966

Louisiana State University—MA. 1973

Southeastern Louisiana University, Honorary Doctorate 1996

9. Employment record (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.):

Louisiana Educational Television Authority—President & CEO of Louisiana Public Broadcasting—7733 Perkins Road, Baton Rouge, Louisiana 70810—May, 1982 to present.

Louisiana Educational Television Authority—News Director for Louisiana Public Broadcasting, May 1976 to May 1982

Free Lance Reporter 1972–1976

Graduate Assistant LSU 1967–1970

Stars and Stripes Newspaper 1966–1967

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State or local governments, other than those listed above.)

Governor's Taskforce on Telecommunications

State Technology Advisory Committee

Chairman of the Board, the Association of Public Television Stations (APTS)

Mayor's Taskforce Smart Growth

Mayor's Taskforce Children's Coalition

Chairman of Louisiana's Film & Video Archives Commission

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

Vice Chairman Public Broadcasting Service

Chairman Satellite Educational Resources Consortium

Chairman Organization State Broadcasting Executives

Chairman SECA

Chairman of Forum of Public Television Executives

University Pointe (Chairman of the Board, non-profit retirement Community)

Mary Bird Perkins Cancer Center (Board of Directors)

First Benefit Capital Insurance Company (Board Member)

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

University Methodist Church

Rotary Club of Baton Rouge

Junior League Sustainer

Public Affairs Research Council (Board of Directors)

Baton Rouge Chamber of Commerce (Board of Directors)

Baton Rouge Green (Board of Directors)

Chi Omega Alumni
Capital Area Women's Network
Leadership Louisiana

13. Political affiliations and activities:

I have been employed as a political reporter, on camera host or public television executive since 1972. Therefore, I have not been a participant in any political party activities or elections. Serving as a moderator for numerous statewide debates, it is important for me to be very clearly non-partisan.

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

Honorary Doctorate of Humanities—Southeastern University
Communicator of the Year (PRAL)
Outstanding Women of Achievement (YWCA)
Louisiana Women's Political Hall of Fame
Marketer of the Year

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

Numerous letters in *Visions Magazine*, a monthly publication sent to Friends of Louisiana Public Broadcasting. An introduction to *An Illustrated History Of Louisiana* published 2003 by the Foundation for Excellence in Louisiana Public Broadcasting.

16. Speeches: (Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.)

Please see attachments as Graduation Speech 2002 & Congressional Testimony

17. Selection:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

My name was suggested by the board and officers of the Association of Public Television Stations (APTS). The authorizing legislation of CPB indicates one member shall be selected from among individuals who represent the licensees and permittees of public television stations. It is my honor to be considered for this position.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

Since 1976, I have worked for Louisiana Public Broadcasting helping to build our network into a vital community institution. In a state that has great challenges, we recognize the importance of public broadcasting as an educational medium. On the national level, I have served as Chairman of the Board for APTS and Vice Chairman of the Board for PBS. When there is a thorny subject facing public broadcasting, I have co-chaired our national negotiation for voluntary carriage of PBS stations by cable providers and direct broadcast satellite. I have also chaired industry groups on common carriage of programs, membership and education. On several occasions, I have testified before Congress as a representative of the station community. I hope my knowledge of our industry will be helpful to the Corporation for Public Broadcasting.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

Not applicable. Position is for 60 day Board position.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Not applicable. Position is for 60 day Board position.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employers, business firms, associations, or organizations?

Not applicable. Position is for 60 day Board position.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Not applicable. Position is for 60 day Board position.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

If confirmed, I would hope to serve out my full term.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

I am a state employee with retirement benefits after age 60. I am a participant in the state's deferred compensation plan and also have an individual IRA.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

My investments consisting of mutual funds and bank money market accounts are modest and should not create any potential conflicts of interest.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated?

My personal business dealings should result in no conflict of interest. I would recuse myself.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I have testified before the House Appropriations Committee when it was chaired by Representative Bob Livingston of Louisiana. My testimony was in support of the funding for Public Broadcasting. I have also testified before the House Commerce Committee chaired by Representative Billy Tauzin of Louisiana. At the Congressman's request, I discussed the digital transition and the authorization of the Corporation for Public Broadcasting.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I anticipate no potential conflict of interest, but I would rely on the General Counsel to give me advice if any question should arise.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

I agree to have any such opinions provided to the Committee.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain?

No, other than routine licensing proceedings before the Federal Communications Commission.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

I came from a military family with a strong sense of public service.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your board/commission complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your board/commission does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes. I look forward to the opportunity.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experiences and education qualify you for the position for which you have been nominated?

I have 27 years experience in public broadcasting and a passion for the potential of this medium. I also understand the many challenges we face both fiscally and technically. I hope my knowledge will prove useful to the Corporation and to Congress.

2. Why do you wish to serve in the position for which you have been nominated?

As a station representative, I hope to bring the grassroots perspective to this board. Local service to citizens is the foundation of public broadcasting.

3. What goals have you established for your first two years in this position, if confirmed?

I would like to explore how the Federal appropriations are spent and how success is measured. Additionally, I would like to better understand the strategic planning role of the Corporation.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

Although I have legislative responsibilities for encouraging the growth of Public Radio in Louisiana, I do not have an in-depth knowledge of the industry on a national basis. There are numerous meetings I would attend that would educate me fairly quickly.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

Our representative democracy has a clear responsibility to secure life, liberty and the pursuit of happiness for our citizens. As a wealthy nation, we should not allow our poor to go hungry nor our sick to suffer. Government should allow individual freedom of opportunity, religion, and speech. I also believe in personal responsibility and private investment. Government must provide security, but should also encourage business development, cultural investments, and charitable donations. Some government programs are created to address a crisis, but continue past the need. I think changing technology may also require a change in the way government does business.

6. Describe the current mission, major programs, and major operational objectives of the board/commission to which you have been nominated.

It is my understanding that the role of the Corporation for Public Broadcasting is to encourage the growth and development of public radio and television broadcasting as media for instructional, educational, and cultural purposes. The specifics of programs and objectives will be something I must learn if the Senate sees fit to confirm my nomination.

7. What do you believe to be the top three challenges facing the board/commission and why?

My initial impressions of the challenges to the Corporation come from a station perspective and include a chronic lack of funding, a changing media environment, and an expensive fundamental change in technology.

8. In reference to question number six, what factors in your opinion have kept the board/commission from achieving its missions over the past several years?

The Board has had to respond to rapidly changing technologies at the same time an economic downturn at both the national and state levels has seriously impacted public broadcasting.

9. Who are the stakeholders in the work of this board/commission?

I mentioned many of them previously, but I should say that every taxpayer and every viewer or listener has a clear stake in this enterprise.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

I believe we have a responsibility to listen and to respond to all stakeholders with policies that support the legislation that created the Corporation for Public Broadcasting.

11. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

Although I was brought up in a military family, I believe in a "team approach" to running our organization. We have clear civil service guidelines, and I have never had a complaint brought against me.

12. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

I have a long and good working relationship with every member of the Louisiana delegation. I have known many of them and their staffs prior to their coming to Washington. As I mentioned previously, I have testified before both the House Appropriations and Commerce Committees. As the Chairman of the Board of APTS, I have had the pleasure of meeting with numerous Senators and Congressmen.

13. In the areas under the board/commission jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

I would hope Congress would reauthorize the Corporation for Public Broadcasting and would adequately fund our transition to digital broadcasting.

14. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president.

I would hope to serve the President as a thoughtful, honorable, and responsible board member.

The CHAIRMAN. Thank you very much, Ms. Courtney.
Mr. Van Tine?

**STATEMENT OF KIRK K. VAN TINE, COUNSELOR TO THE
SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. VAN TINE. Chairman McCain, Senator Lautenberg, and Senator Allen, thank you for the opportunity to appear before you today. And I especially want to thank Senator Allen for his kind introduction.

It's a privilege to be here, and a great honor to have been selected by President Bush and Secretary Mineta for this position. If confirmed, I look forward to working closely with all the Members of this Committee on the many important transportation issues facing the Department today.

During the past 2 years as General Counsel of the Department, I had the opportunity to work on a wide variety of transportation issues with a wide variety of people both inside and outside the Department. I learned a great deal during that period, and I believe that, if I were confirmed, my experience as General Counsel would be valuable preparation for the duties of the Deputy Secretary.

I understand the complexity of the issues before the Department, and I have learned, from Secretary Mineta, the importance of listening and establishing a dialogue among those with conflicting views. One of the hallmarks of Secretary Mineta's tenure has been a persistent effort to achieve consensus where there are differences of opinion, and I view that as one of the fundamental responsibilities of the Deputy Secretary, as well.

If confirmed, I'd also hope to work closely with all the Members of the Committee in connection with the Secretary's legislative priorities. As you know, the most urgent of these right now are reaching agreement on the FAA reauthorization and the reauthorization of the many surface transportation programs affecting the safety and infrastructure of our transportation system.

I'd also hope to participate in an active dialogue with this Committee to help shape a new and stable future for national intercity passenger rail service in this country. And, Senator Lautenberg, on

that point I would just like to assure you that the Department understands your concerns and is committed to the continuation of intercity passenger rail service, and I'd especially like to talk to you further about those issues, if I were confirmed.

A second objective would be to help develop a seamless, smoothly functioning working relationship with the Department of Homeland Security. While our relationship is already cooperative and productive, there are numerous issues pending now and numerous issues that will arise in the future where close coordination and collaboration would help substantially to ensure that both the security and economic consequences of our respective actions are understood before, rather than after, the actions are taken. We owe it to the transportation industries we deal with every day and to the American people, as a whole, to ensure that both missions are accomplished as efficiently and intelligently as possible.

Finally, a traditional role for the Deputy Secretary is to focus on improving the management of the Department's programs. While Secretary Mineta's team has made excellent progress in that regard over the past few years, there is always room for improvement, as our Inspector General reminds us from time to time. As General Counsel, I worked closely with the Inspector General in addressing numerous management issues within the Department, and I would expect to maintain that excellent working relationship in the future.

Secretary Mineta has emphasized the need to deliver a full measure to the American taxpayers in programs we administer, and I believe that, if confirmed, my background would equip me well for that task. I know you're extremely busy, and I'd like to thank the Committee for scheduling today's hearing. I'd be pleased to respond to any questions you may have.

[The prepared statement and biographical information of Mr. Van Tine follow:]

PREPARED STATEMENT OF KIRK K. VAN TINE, NOMINEE TO BE DEPUTY SECRETARY,
U.S. DEPARTMENT OF TRANSPORTATION

Chairman McCain, Senator Hollings and members of the Committee, thank you for the opportunity to appear before you today to consider my nomination to be Deputy Secretary of the Department of Transportation. It is a privilege to be here and a great honor to have been selected by President Bush and Secretary Mineta for this position. If confirmed, I look forward to working closely with all the members of this Committee on the many important transportation issues facing the Department today.

During the past two years, as General Counsel of the Department, I had the opportunity to work on a wide variety of transportation issues with a wide variety of people, both inside and outside the Department. I learned a great deal during that period, and I believe that, if I were confirmed, my experience as General Counsel would be valuable preparation for the duties of the Deputy Secretary.

I understand the complexity of the issues before the Department, and I have learned from Secretary Mineta the importance of listening and establishing a dialogue among those with conflicting views. One of the hallmarks of Secretary Mineta's tenure has been a persistent effort to achieve consensus where there are differences of opinion, and I view that as one of the fundamental responsibilities of the Deputy Secretary as well.

If confirmed, I would also hope to work closely with all the members of this Committee in connection with the Secretary's legislative priorities. As you know, the most urgent of those priorities right now are reaching agreement on the FAA reauthorization, and the reauthorization of the many surface transportation programs affecting the safety and infrastructure of our transportation system that will expire next February under the current TEA-21 extension. I would also hope to participate

in an active dialogue with this Committee to help shape a new and stable future for national intercity passenger rail service in this country.

A second objective, both in the short term and the long term, would be to help develop a seamless, smoothly functioning working relationship with the Department of Homeland Security in the many areas where our respective responsibilities intersect. While our relationship is already cooperative and productive, there are numerous issues pending now, and numerous issues that will arise as the Department of Homeland Security becomes fully operational, where close coordination and collaboration would help substantially to ensure that both the security and economic consequences of our respective actions are understood before, rather than after, the actions are taken. We owe it to the transportation industries that we deal with every day, and to the American people as a whole, to ensure that both missions are accomplished as efficiently and intelligently as possible.

Finally, a traditional role of the Deputy Secretary is to focus on improving the management of the Department's programs. While Secretary Mineta's team has made excellent progress in that regard over the past few years, there is always room for improvement, as our Inspector General reminds us from time to time. As General Counsel, I worked closely with the Inspector General in addressing numerous management issues within the Department, and I would expect to maintain that excellent working relationship in the future. I take very seriously the Inspector General's recommendations regarding the top management challenges facing the Department, including particularly the need for effective oversight of "mega projects." Secretary Mineta has emphasized the need to deliver "full measure" to the American taxpayer in the programs we administer, and I believe that, if confirmed, my background would equip me well for that task.

I know that you are extremely busy, and I would like to thank the Committee for scheduling today's hearing. I would be pleased to respond to any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nick names used.) Kirk K. Van Tine.
2. Position to which nominated: Deputy Secretary, U.S. Department of Transportation.
3. Date of nomination: September 18, 2003.
4. Address: (List current place of residence and office addresses.)
 Residence: Information not released to the public.
 Office: U.S. DOT, 400 7th Street, S.W., Washington, D.C. 20590.
5. Date and place of birth: August 30, 1948; Syracuse, New York.
6. Marital status: (Include maiden name of wife or husband's name.)
 Married to Barbara B. Van Tine; maiden name Barbara A. Byers.
7. Names and ages of children: (Include stepchildren and children from previous marriages.)
 Mary Lindsay Van Tine, 22; Meredith Leigh Van Tine, 19.
8. Education: (List secondary and higher education institutions, dates attended, degree received.)
 1966 to 1970 U.S. Naval Academy, Annapolis, MD; B.S., June 1970
 1975 to 1978 University of Virginia School of Law, Charlottesville, VA; J.D. 1978
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
 1970–1975 Officer, U.S. Navy, various locations
 1975–1978 Student, U. Va. School of Law, Charlottesville, VA
 Summer 1976 Summer Associate, Law office of Northcutt Ely, Washington, D.C.
 Summer 1977 Summer Associate, Baker & Botts, Washington, D.C.
 Summer 1977 Summer Associate, Hunton & Williams, Richmond, VA
 1978–2001 Attorney, Baker Botts, L. L. P., Washington, D.C. (Associate 1978–1986; Partner 1987–2001)
 9/01 to Present General Counsel, U.S. Department of Transportation

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State or local governments, other than those listed above.)

General Counsel, U.S. Department of Transportation, 2001–2003

U. S. Navy, 1966–1975

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

Former Partner, Baker Botts, L.L.P

Former Partner, Boterlove (Baker Botts real estate partnership in Houston office building where firm offices are located)

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Member, D.C. Bar Association

Member, City Club of Washington

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

11/17/00 to 12/13/00 Provided legal services in support of George W. Bush in connection with 2000 Presidential Election litigation in Tallahassee, Florida.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

1999 The Bluebonnet Fund (Baker Botts Political Action Committee, \$522)

2000 The Bluebonnett Fund (Baker Botts Political Action Committee, \$522)

2001 The Bluebonnett Fund (Baker Botts Political Action Committee, \$540)

1999 George W. Bush, Republican Presidential Primary Campaign, \$1,000

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

Competitive Appointment to U.S. Naval Academy

National Defense Service Medal, U.S. Navy

Virginia Law Review

Order of the Coif (top 10 percent of law school class)

D.C. Bar Best Section Award, Litigation Section Co-chair, 1999–2000

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

“Financial Services Modernization:” A Cure for Problem Banks?, 69 Wash. U.L. Q. 809 (1991).

Enforcement Issues Under the Natural Gas Act of 1938 and the Natural Gas Act of 1978, 16 Hous. L. Rev. 1025 (1979).

16. Speeches: (Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.) None.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen as a result of my background and experience as General Counsel of the Department of Transportation for the past two years and as a lawyer practicing in Washington, D.C. since 1978. As General Counsel, I have gained substantial experience and familiarity with a wide range of policy issues and administrative matters presently before the Department of Transportation.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

For the past two years, as the chief legal officer of the Department, I have been responsible for the resolution of significant substantive issues arising across the whole range of the Department's activities. In addition, working with the modal Chief Counsels, I have been responsible for the management of the Department's legal personnel. My experience and training to date, both at the Department and in private practice, have been directed towards solving practical problems in ways that are consistent with law. Through my involvement as General Counsel, I am already familiar with many of the important issues facing the Department today, and I am well acquainted with many of the key career staff and political appointees at the Department. I have also gained experience with respect to the workings of government, and have learned to represent the Department capably in the legislative process and within the Executive Branch. Also relevant to the day-to-day functions of the office of Deputy Secretary is my management experience over the past 33 years in various positions in the U.S. Navy, in a law firm, and at the Department.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
Not applicable (current DOT employee).
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.
I have no such arrangements or agreements with any entity.
2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.
Please refer to Deputy General Counsel Opinion Letter.
3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated?
Please refer to Deputy General Counsel Opinion Letter. In addition, during 1995–1996, I served as lead counsel in one case against the Department of Transportation, *Mesa Air Group, Inc. v. Department of Transportation*, 87 F.3d 498 (D.C. Cir. 1996). That case concluded in 1996, and I have had no relationship with Mesa Air Group since that date.
4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.
For the past two years, I have participated in DOT legislative issues as necessary to carry out my duties as General Counsel.
5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)
Please refer to the Deputy General Counsel Opinion Letter.
6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency,

professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information?

Yes, to the best of my ability.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

Yes, to the best of my ability.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee?

Yes, to the best of my ability.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

If confirmed, I expect that one of my primary responsibilities as Deputy Secretary would be to supervise and work to improve the rulemaking process within the Department. I would expect to be involved in all major rulemaking efforts, with the goal of ensuring that all rules issued by the Department comply with the letter and the spirit of the laws passed by Congress. As part of that process, I would expect to meet regularly with each of the operating administrations within the Department to review the progress of their rulemaking efforts.

5. Describe your department/agency's current mission, major programs, and major operational objectives.

The Department's primary mission with respect to every mode of transportation is to promote safety. Other missions include, in general, the need to maintain and improve the transportation infrastructure, increasing transportation efficiency and capacity, thereby relieving transportation congestion, the regulation of transportation modes as authorized by statute, and the appropriate balancing between development of transportation systems and the protection of the environment. In addition, the Maritime Administration promotes a healthy merchant marine in support of the defense posture of the United States. The Department also works closely with the Department of Homeland Security to improve the security of all modes of transportation.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualifies you for the position for which you have been nominated.

See response to Part A, items 17 (a) and (b) above.

2. Why do you wish to serve in the position for which you have been nominated?

First and foremost, I have a genuine desire to be of service to the United States. The actions of the Department of Transportation have a direct impact on the daily lives of the American people and I would be honored to play a role in helping to shape those actions. In addition, I enjoy new challenges, and I believe that the position of Deputy Secretary would be both intellectually challenging and professionally stimulating.

3. What goals have you established for your first two years in this position, if confirmed?

If confirmed, my immediate short term goal will be to meet with each of the Administrators, acquaint myself with the current issues facing each of the operating

administrations, and ensure that an action plan to resolve those issues is in place and proceeding satisfactorily. In addition to the remaining issues regarding DOT's 2004 appropriation, the Department presently has pending reauthorization proposals for each of its modes, and a reauthorization proposal for Amtrak is pending as well. I would expect to be involved in those legislative matters and would expect to work closely with Congress as it considers and enacts authorizing legislation. Longer term, I would also expect to devote substantial time and attention to a continuing review of the economic condition of the airline industry, as it recovers from the terrorist attacks of September 11, 2001. On a continuing basis, I would work to cement a strong working relationship and solid communication links with the Department of Homeland Security, as we work together to address the security challenges facing the Nation's transportation infrastructure. Finally, I would hope to make significant progress in achieving the Secretary's goal of improving and expediting the Department's rulemaking process.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

As General Counsel, I worked closely with the previous Deputy Secretary virtually every working day for almost two years. As a result, I had daily opportunities to observe the considerable skill with which he carried out his duties, and I learned a great deal from watching him. While I am still relatively inexperienced in government, I believe that my legal training and my experiences over the past two years provide me with the basic skills necessary to carry out the duties of the Deputy Secretary successfully.

5. Who are the stakeholders in the work of this agency?

The Department's primary stakeholders are the American people, virtually all of whom have significant personal and economic interests in the safety and efficiency of our transportation systems. Other stakeholders, all of whom have major roles in improving the overall quality of our transportation systems include Congress, the States, local governments, commercial businesses that provide transportation goods and services, and the labor forces who build and operate our transportation network.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten.

If confirmed, one of my responsibilities as Deputy Secretary would be to listen to the views of the stakeholders identified above, and give those views appropriate weight in making decisions affecting the operations of the Department. In balancing the views of various stakeholders, the Department should be guided by the intent of Congress as expressed in the statutes applicable to the Department's operations.

7. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

If confirmed, I would be responsible as Deputy Secretary for ensuring the Department's compliance with all Acts of Congress, including the Chief Financial Officers Act. As General Counsel, I have worked closely with both the Chief Financial Officer and the Inspector General to ensure full compliance with all legal requirements regarding the Department's financial management. I understand the importance of accounting controls and would ensure continued compliance with all legal requirements to the best of my ability.

(b) What experience do you have in managing a large organization?

My management training and experience began, in a very small way, on my first day at the U.S. Naval Academy, and my primary roles during my subsequent service as an officer in the Navy were to lead and manage. While I did not manage large numbers of people, I learned to lead by example, to instill a sense of common purpose and pride in the organization, to earn the respect of my subordinates by learning the details of their work, and to value the contributions of all.

Between 1978 and 2001, I practiced law at the firm of Baker Botts, L. L. P., eventually becoming the head of the Litigation Practice Group in the Washington, D.C. office. When I left the firm, that practice group consisted of approximately 40 lawyers and seven legal assistants, for which I had management responsibility. Over the course of my 23 years at Baker Botts, I had various other management responsibilities within the firm, serving as hiring partner for the Washington office for nine years, serving on the firm-wide strategic planning committee, serving on the firm-wide compensation committee, and serving on various ad hoc budget and marketing committees. I also served on the Steering Committee of the Law Practice Management Section of the D.C. Bar for several years, serving as Co-Chair of the Section during 2000-01. While no law firm experience can compare to the manage-

ment challenges presented by government service, I believe that, when I became General Counsel of the Department in 2001, I was adequately prepared to assume the management responsibilities associated with that position.

Since September 2001, as General Counsel, I have had primary responsibility for managing the legal affairs of the Department, and have been significantly involved in a wide range of other management issues, including major administrative matters regarding the personnel, working space and organization of the Department.

8. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

Performance goals and required reports are a valuable tool for both Congress and the Department. For Congress, the requirement to establish goals and report results provides a concrete way to assess an agency's effectiveness in carrying out its missions. The required reports also provide a way for Congress to identify specific problem areas at an early stage. For the Department, the establishment of performance goals is beneficial because the process of developing those goals requires the Department to consider, discuss and decide among competing priorities and possible policy choices and formulate an integrated and coherent plan for achieving its objectives. In addition, the requirement to submit reports is useful as a catalyst for establishing internal deadlines in the organization and ensuring that necessary actions move forward as expeditiously as possible. The preparation of required reports also serves as a focus for a periodic internal evaluation of the Department's performance, and as an additional incentive to maintain proper management and supervision over the Department's activities.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

Congress has an important oversight role in reviewing the performance of Executive Branch agencies. Where an agency has failed to achieve its goals, an important first question should be whether the agency has sufficient resources to achieve those goals. If so, then the focus should be on whether the agency has been granted, and has exercised, the necessary legal authority to carry out its missions and achieve its goals. If the agency has simply failed to perform satisfactorily, its operations should be reviewed to determine the fundamental problems that it must overcome. While it is beneficial to review periodically the need for and nature of government programs, elimination, downsizing, privatization or consolidation would seem to be solutions to be undertaken only where there is sufficient consensus that the original purposes of the agency are no longer necessary in the public interest, or that the agency no longer has the ability to perform its assigned mission.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

The performance of the Deputy Secretary should be evaluated in at least three areas. First, as one of the senior officials of the Department, the Deputy Secretary should give sound, clear and timely advice to the Secretary and the Administrators, helping the Department to achieve its operational and policy goals in implementing the statutes adopted by Congress. Second, as a senior manager within the Office of the Secretary, the Deputy Secretary has a responsibility to direct the activities and monitor the performance of other OST personnel. Third, as a Departmental official who will work closely with both Congress and the other Executive Branch agencies, the Deputy Secretary should be a knowledgeable, professional and collegial advocate for the views of the Department, and should attempt to resolve differing views in a cooperative rather than a confrontational way.

9. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I believe that supervisor/employee relationships should be professional, but as informal as possible while maintaining a businesslike atmosphere. I have always tried to treat others as I would like to be treated, with respect and consideration. I follow a supervisory model that stresses teamwork, open and frequent communications, and inclusion and consideration of all views and ideas in the decision making process. I give credit for successes to my subordinates, and assume responsibility for problems myself. No employee complaints have ever been brought against me.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

During the past two years, in the course of my duties as General Counsel, I believe I have begun to develop a good working relationship with Congress, including particularly the committees with jurisdiction over transportation issues. The majority of my communications with Congress to date have been in the form of formal correspondence or technical discussions with committee staff. If confirmed, I would continue to develop a cooperative and professional working relationship, to ensure that the concerns of the committees and of individual Members are promptly and effectively addressed.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

I believe that the proper relationship between the Deputy Secretary and the Inspector General is one of independence and mutual respect. As a matter of course, I believe the Deputy Secretary should cooperate fully with the Inspector General at all times, and should make every effort to implement recommendations of the Inspector General regarding matters within the scope of the Deputy Secretary's authority. As General Counsel, I have established a close working relationship with the Inspector General and his staff, and if confirmed, I would expect to continue that relationship and work cooperatively with the common goal of improving the operations of the Department.

12. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

I believe that one of the Deputy Secretary's primary responsibilities is to ensure that all of the Department's actions are authorized by law, and consistent with both the letter and the spirit of the statutes passed by Congress. If confirmed, I will work closely with the Committee and other stakeholders to ensure that all views as to the intent of Congress are given appropriate weight.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

With respect to the Department of Transportation, I believe that safety issues should always be the highest priority. With that in mind, establishing the statutory authority for, and long-term financing of, the Department's aviation and surface transportation programs through the reauthorization process is currently the highest legislative priority of the Department. Finally, in the near term, it is important that appropriations legislation be enacted to provide current-year funding for the programs of the Department.

14. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation.

Yes, to the extent such matters are within my authority as Deputy Secretary. If confirmed, my primary roles in this area will be to consult with the senior staff of the Department regarding the criteria in each case and to advise the Secretary with respect to budget and grant award issues. I would begin to do so immediately, to the extent I am involved in decisions regarding discretionary spending.

The CHAIRMAN. Thank you very much.
Mr. Rosen?

**STATEMENT OF JEFFREY A. ROSEN, SENIOR PARTNER,
KIRKLAND & ELLIS, LLP**

Mr. ROSEN. Chairman McCain, Senator Allen, Senator Lautenberg, thank you for the opportunity to appear here today. It is an honor both to have been nominated by President Bush and to appear before this Committee as you consider my nomination for the position of General Counsel of the U.S. Department of Transportation. I also would like to thank Senator Allen for those very kind introductory remarks.

After spending more than 21 years in the private practice of law, it would be a privilege for me to play a part in helping Secretary Mineta and the Department address the transportation issues that affect every citizen and every business in our country. Indeed, the

transportation industries have been important to my family and of great personal interest to me.

My grandfather worked most of his life for a railroad in the Northeast. My brother went to college at Embry-Riddle Aeronautical Institute because he wanted to fly. And in my own professional career, I came into contact with a wide range of industries, occasionally including the transportation sector of our economy, such as cruise lines, ammonia pipelines, and automobiles.

The Department of Transportation faces important challenges in improving the safety of our transportation systems, in reducing congestion, and maintaining and improving our transportation infrastructure while, at the same time, protecting our communities and environment. If confirmed as general counsel, I would work to provide the Department with the highest quality of legal advice and representation.

Finally, let me say that I have a strong desire to participate in public service and contribute in some meaningful way to our country. Reflecting back many years, that was what attracted me to law school in the first place. I regard my nomination to this position as a great honor, and I hope I'll have the privilege to serve. If I am confirmed, I look forward to working with all of you and your staffs.

Thank you, again, for giving me this opportunity to appear today, and I would be, of course, pleased to answer any questions you might have.

[The prepared statement and biographical information of Mr. Rosen follow:]

PREPARED STATEMENT OF JEFFREY A. ROSEN, NOMINEE TO BE GENERAL COUNSEL,
U.S. DEPARTMENT OF TRANSPORTATION

Chairman McCain, Senator Hollings and Members of the Committee, thank you for the opportunity to appear here today. It is an honor both to have been nominated by President Bush and to appear before this Committee as you consider my nomination for the position of General Counsel of the U.S. Department of Transportation.

After spending more than 21 years in the private practice of law, it would be a privilege for me to play a part in helping Secretary Mineta and the Department address the transportation issues that affect every citizen and every business in our country. Indeed, the transportation industries have been important to my family, and of great interest to me. My grandfather worked most of his life for a railroad in the northeast. My brother went to college at Embry-Riddle Aeronautical College because he wanted to fly. In my own professional career, I came into contact with a wide range of industries, occasionally including the transportation sector of our economy, such as cruise lines, ammonia pipelines, and automobiles.

The Department of Transportation faces important challenges in improving the safety of our transportation systems, reducing congestion, and maintaining and improving our transportation infrastructure, while protecting our communities and environment. If confirmed as General Counsel, I would work to provide the Department with the highest quality of legal advice and representation.

Because I was a litigator, as opposed to a specialist in transportation regulations or legislation, I will need to learn more about the details of the particular statutes under which the Department operates, and I have started that process. Given the variety and volume of the Department's activities, I believe that my broad experience as a lawyer, as well as my experience in managing lawyers at a large law firm, would prove to be helpful if I am confirmed to serve as the chief legal officer of the Department of Transportation.

Finally, let me say that I have a strong desire to participate in public service and contribute in some meaningful way to our country. Reflecting back many years, that was what attracted me to go to law school in the first place. I regard my nomination

to this position as a great honor, and hope I will have the privilege to serve. If I am confirmed, I look forward to working with all of you and your staffs.

Thank you again for giving me this opportunity to appear today, and I would be pleased to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nick names used.): Jeffrey Adam Rosen.
2. Position to which nominated: General Counsel of the U.S. Department of Transportation.
3. Date of nomination: October 3, 2003.
4. Address:
Residence: Information not released to the public.
5. Date and place of birth: April 2, 1958; Boston, Massachusetts.
6. Marital status: Married for 21 years to Kathleen Nichols Rosen; wife's maiden name was Kathleen Sue Nichols.
7. Names and ages of children: Anne Rebecca Rosen, age 13; Sally Amanda Rosen, age 11; James Kenneth Rosen, age 9.
8. Education:

Brockton High School, Brockton, Massachusetts; attended 9/72–6/76; diploma in June 1976.

Northwestern University, Evanston, Illinois; attended 9/76–6/79; B.A. with highest distinction received in June 1979.

Harvard Law School, Cambridge, Massachusetts; attended 9/79–6/82; J.D. magna cum laude received in June 1982.

9. Employment record:

(a) Kirkland & Ellis LLP., Washington, D.C., June 1982 to October 2003: Began as an associate, became a partner in 1988, and eventually became co-head of firm's Washington, D.C. office and a member of the firm-wide management committee beginning in 1999. Private practice of law for 21 years.

(b) Georgetown University Law Center, Washington, D.C., January 1996 to present: Adjunct Professor. Have taught courses in professional responsibility and legal ethics.

(c) Dewey Ballantine LLP., New York, N.Y., June 1981 to August 1981. Worked as summer associate at law firm during summer before last year of law school.

(d) Lord Bissell & Brooke, Chicago, Illinois, June 1980 to August 1980. Worked as summer associate at law firm during summer after first year of law school.

(e) Apparel Buying Company, Braintree, Massachusetts, June 1979 to August 1979 (and previous summers). Worked as summer warehouse employee during summer after college and before law school.

10. Government experience:

Member of Arlington County (Virginia) Historical Affairs and Landmark Review Board, appointed by County Board, during the period March 1991 to March 1993.

11. Business relationships:

Partner in Kirkland & Ellis L.L.P., 6/82 to 10/03, and Kirkland & Ellis International, 11/94 to 10/03

Member of the Board of Visitors, Northwestern University College of Arts & Sciences, 5/98 to present.

12. Memberships:

Memberships: U.S. Supreme Court Historical Society (1990 to present); American Law Institute (1996 to present); American Bar Association (1983 to present); National Association of Scholars (approx. 1995 to present); Society of Automotive Engineers (approx. 1990 to present); Association for the Advancement of Automotive Medicine (approx. 1990 to present); Defense Research Institute (approx. 1990–95); Chesterbrook Woods Citizens Association (1993–present); McLean Community Association (approx. 1994–2002); Virginia Historical Society (1991 to present); National Trust for Historic Preservation (approx. 1995–2002); Arlington Historical Society (1991–94); Fairfax Historical Society (1997 to present); Library of Congress Associates (approx. 1995–2001); Northwestern University Alumni Club of Washington, D.C. (1983 to present); McLean

Racquet Club (1994 to present); Chesterbrook Community Association (1994 to present); Reston Raiders Hockey Club (1998 to present).

Bar Memberships: D.C. Bar; U.S. Supreme Court; U.S. Court of Appeals for the D.C. Circuit; U.S. Court of Appeals for the Federal Circuit; U.S. Court of Appeals for the Third Circuit; U.S. Court of Appeals for the Fourth Circuit; U.S. Court of Appeals for the Sixth Circuit; U.S. Court of Appeals for the Eleventh Circuit; U.S. District Court for the District of Columbia; U.S. District Court for the Eastern District of Michigan; U.S. District Court for the Northern District of Illinois.

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

I have not held nor been a candidate for any public office. While in law school in 1981 I became an Alternate Member of the Ward Seven Democratic Committee in Cambridge, MA. In 1987 I served as a member of the Arlington, VA Democratic Committee. In 1988 I was elected as a delegate to the Virginia Democratic convention.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years: None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

My records reflect the following contributions of \$500 or more: September 1993:

Kirkland & Ellis PAC, \$750

July 1994: Kirkland & Ellis PAC, \$750

November 1995: Kirkland & Ellis PAC, \$1,125

December 1997: Cordray for Ohio Attorney General, \$500

June 1999: Bush for President, \$1,000

May 2000 Bush for President Compliance Committee, Inc., \$200

February 2000: Cordray for U.S. Senate Committee, \$500

April and December 2001, Senator John Warner Committee, \$250 and \$250

In addition, I have from time to time made various contributions of lesser amounts to other candidates and political organizations, such as the Republican National Committee.

14. Honors and awards:

Member of American Law Institute; In college, I was elected to Phi Beta Kappa and Deru honorary societies.

15. Published writings:

Article: "Court Acceptance of 'In Kind' Settlements in Consumer Class Actions," 9 Class Actions & Derivative Suits (ABA Litigation Section) 20 (Summer 1999).

16. Speeches:

Speaker at Kirkland & Ellis Litigation Conference on "The Future of Class Action Litigation: Dealing with the Ripple Effects of The Supreme Court Decisions in *Amchem* and *Ortiz*" (September 16, 1999)

Speaker at Price Waterhouse General Counsel Forum on "Taming the Class Action Tiger: Surviving Settlement Challenges" (December 16, 1999).

Speaker at ALI-ABA Securities Law Seminar on "New Dimensions In Securities Litigation" (March 22, 1990).

I have not been able to locate copies of my actual remarks at these presentations.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen for this nomination because I was regarded as an experienced lawyer with management experience in a large national law firm.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Several aspects of my professional experience qualify me for this position. First, I am an experienced trial lawyer, with more than 21 years of experience in Federal and state courts around the country. I have appeared in courts in more than 20 states, and in proceedings involving jury trials, bench evidentiary hearings, arbitrations, and appeals, so I have a background that enables me to provide legal counsel to the Secretary and others at the Department. Second, I have had considerable experience in the management of lawyers in a large organization at Kirkland & Ellis LLP, which is a law firm with more than 900 lawyers and 2400 total personnel in

six office locations. In addition to my term on the firm's management committee, I have had experience on the firm's finance committee, litigation management committee, technology committee, and personnel review committees. Those experiences should be useful in helping to guide the Department's legal activities and its more than 450 lawyers. Third, during the course of my 21 years of private practice, the business litigation in which I have participated has brought me into contact with a wide variety of industries, including at times some participants in the transportation sector, such as cruise lines, ammonia pipelines, railroads, and automobile manufacturers. While I am not an administrative law or regulatory practitioner, some familiarity with the transportation sector is likely to be helpful to my understanding of the legal, legislative, and policy issues that the Department faces. Fourth, as an adjunct professor at Georgetown University Law Center I have taught professional responsibility and legal ethics, which are obviously as important to public service as to the private practice of law.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I have no such arrangements except the departure compensation payment owed by Kirkland & Ellis LLP and the unfunded retirement plan benefits that are identified on my financial disclosure report.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I am unaware of any potential conflicts of interest other than those identified in the Acting General Counsel's Opinion letter.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated?

Please refer to the Acting General Counsel's Opinion Letter.

In addition, during 1994 and 1995 I served as counsel in a case against the Department of Transportation, *General Motors Corp. v Pena*, No. 94-CV-74668 (E.D. Mich. 1994-95) and NHTSA EA92-041(1992). That case concluded in March, 1995 with a settlement *See* 60 *Fed. Reg.* 13752 (March 14, 1995). I also appeared as counsel with regard to investigations before the NHTSA in four instances: (a) 1986-89 Hyundai Excel transmission investigation, NHTSA C-92-001; this matter was closed by the agency on October 29, 1993. (b) 1994 Hyundai Sonata compliance with FMVSS 214, NHTSA HS#631039; this matter was closed by the agency early in 1995. (c) GM Type III door latch petition, NHTSA DP-96-008; this petition was denied by the agency in 1996. *See* 61 *Fed. Reg.* 64563 (December 5, 1996). (d) 1991-97 GM S/T Trucks Antilock Brakes, NHTSA EA94-038; the agency closed this investigation on February 8, 2000. To the best of my knowledge, none of these presently remain open and/or pending before the Department of Transportation.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Please refer to the Acting General Counsel's Opinion Letter.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details?

I have never been involved as a party to any civil litigation or administrative agency proceeding, nor have I been an officer of any business that was a party. I am aware that Kirkland & Ellis LLP has on occasion been a party in some civil litigation, but none of those concerned any activities involving me personally nor did they involve the Department of Transportation, and I am not personally familiar with the details of those lawsuits.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information?

Yes, to the extent it is within my authority and ability to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

Yes, to the extent it is within my authority and ability to do so.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee?

Yes, to the extent it is within my authority and ability to do so.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

If I am confirmed, this would be an important aspect of my responsibilities as General Counsel. I am generally familiar with the Administrative Procedure Act and the body of judicial case law that addresses the need for rulemaking activities to comport with the enabling statutes enacted by Congress. The Office of the General Counsel has significant oversight responsibilities with respect to rulemaking activity within the Department. If confirmed, I would want all Department rulemakings to implement effectively the objectives of the statutes passed by the Congress. I would also anticipate that, to the extent permitted by applicable law, I would receive and consider communications from Congress with respect to ongoing and future rulemaking activities. I am prepared to devote the necessary time and effort to avoid the issuance of regulations that would be inconsistent with the laws passed by Congress and the objectives reflected in such laws.

5. Describe your department/agency's current mission, major programs, and major operational objectives.

The Department's mission, programs, and objectives have been defined by the governing statutes passed by Congress and the policy directions set forth by President Bush and Secretary Mineta. As described in the DOT Strategic Plan for 2003–2008, the Department's mission is to "develop and administer policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with the national objectives of general welfare, economic growth and stability, the security of the United States and the efficient use and conservation of the resources of the United States." Much of the Department's mission is pursued through the operating administrations' programs at the FAA, NHTSA,

FMCSA, FHWA, FRA, FTA, MARAD, and SLSDC, as well as the RSPA and the Bureau of Transportation Statistics.

As I understand them, the Department's major priorities involve the enhancement of safety and security to protect the well-being of our population, and the maintenance and improvement of the Nation's transportation infrastructure so as to expand mobility, improve intermodal and global connections, and reduce congestion in order to promote our national economy and quality of life. These objectives need to be accomplished by means (a) that enhance our communities and protect the natural and built environment, (b) that are coordinated with other government objectives and activities, and (c) that reflect an organizational commitment to excellence and continual improvement.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated.

Please see my response to Part A, items 8, 9, and 17.

2. Why do you wish to serve in the position for which you have been nominated?

First, I have a strong desire to participate in public service, and to make a contribution to our country to the extent I can do so usefully. Second, I believe that I can make a positive contribution at DOT because of my professional experience in private practice, my experience in managing lawyers, and my personal interest in the transportation sector of our economy. In addition, I am attracted to the challenge of assisting in the objectives of a Department whose actions have a direct impact on the daily lives of the American people, and I am honored that President Bush has nominated me for this position.

3. What goals have you established for your first two years in this position, if confirmed?

My first and foremost goal is to provide the Secretary and others in the Department of Transportation with the highest quality of legal advice and representation. That would apply with regard to regulation, legislation, litigation, enforcement, negotiation of agreements, and all other aspects of the legal and policy issues that arise at DOT. A second goal is to maintain and enhance consistency in the way that legal issues are considered and addressed throughout the Department. A third goal is to continue and enhance the Department's coordination concerning legal issues with other parts of the Executive Branch, such as the Department of Justice, Department of Homeland Security, Office of Management and Budget, and others. And a fourth is to develop a positive working relationship with the committees and members of Congress with regard to any issues of concern that fall within the General Counsel's purview.

Most immediately, I plan to focus my attention on identifying the current legal issues confronting the Department and its operating administrations, to ensure that they are given the appropriate resources, attention, and support.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

Although I do not consider myself lacking in any necessary skills, the area in which I have the least applicable experience is the legislative process. However, I understand the Department of Transportation to have skilled professionals in the government relations area, skilled legislative lawyers, and the Secretary of course was a member of the Congress for many years, so I expect to become better educated by interacting with the Department's personnel and with the Congress.

5. Who are the stakeholders in the work of this agency?

Ultimately every citizen of the United States is a stakeholder of the Department of Transportation. Every user of the transportation system (and associated systems) is a stakeholder: every motorist, every air traveler, every train passenger, every shipper, and so on. In addition, the suppliers of transportation services are stakeholders: every airline, every trucker, every railroad, every marine operator, every automotive manufacturer, and so on. The builders and suppliers to these providers are themselves also stakeholders: road construction contractors, parts manufacturers, and the like. All of the employees of the businesses that use the transportation system, that provide the transportation services, or that build or furnish supplies to the transportation providers are likewise stakeholders.

Moreover, state and local agencies that have responsibility for our roadways, airports, sea terminals, traffic inspections, and other transportation functions are likewise stakeholders, as are other Federal agencies with transportation-related operations such as the NOAA National Weather Service.

Transportation is a critical element for every business and for every citizen. For that reason, the Congress which represents the American people is also a stakeholder.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number five.

Existing legislative mandates, executive orders, and department precedents define the relationships between the stakeholders and the Department of Transportation (and its operating administrations). If confirmed, my role as the General Counsel would include assuring compliance with applicable legal requirements with regard to considering the views and interests of stakeholders, and assuring that the appropriate weight was given to stakeholders' views in the Department's decision-making and operations. In rendering decisions, the Department should of course be guided by the laws passed by the Congress that apply to the Department's operations.

7. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

If confirmed, I would be responsible as General Counsel for advising the Department with regard to compliance with the Chief Financial Officers Act. My own authority and ability to direct specific actions in financial management and accounting would be limited, but I would seek to ensure that Departmental officials receive appropriate advice about the Act's requirements, and receive assistance in developing any additional measures needed to ensure compliance.

(b) What experience do you have in managing a large organization?

Please see Part A, item 17(b) above. In addition to my role in the firm-wide management of a national law firm with approximately 900 lawyers and 1,500 additional staff in six offices, for the last several years I served as a co-head of the Washington, D.C. office of the law firm of Kirkland & Ellis LLP, which has approximately 130 lawyers and 200 additional staff. Among other things, that required my involvement in a wide range of management issues, such as: (a) hiring, retention, promotion, relocation, and departure issues; (b) budget issues; (c) real estate issues; (d) coordination between different legal practice areas, (e) training and supervision issues, and (f) leadership, motivation, and professional development issues.

8. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

Identifying performance goals can help to ensure efficient and effective agency management and performance. Performance goals, once set, can provide significant measures of accountability for the agency and its personnel. Requiring reports on achieving performance goals can provide Congress with objective information to assess efficiency and effectiveness of agency programs and spending.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

If an agency fails to achieve its performance goals, inquiry should be made as to whether the agency has sufficient resources and adequate legal authority to achieve those goals. If so, the causes of failure should be reviewed and analyzed, and positive corrective steps taken. Ultimately, the steps the Congress should consider must depend on the nature of the problem and its amenability to potential solutions. No steps should be ruled in or out in advance; Congress should maintain the flexibility to make considered judgments based on all the facts and circumstances. Ultimately, Congress must be prepared to take whatever steps it concludes will be most effective and best suited to the public interest.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

If confirmed as General Counsel, I would expect to be evaluated in terms of whether the Secretary and the Department receive appropriate and timely legal advice to enable them to perform their mission well. Indicators of that would include a reasonable success rate in the courts in litigation involving the Department, and more generally, acceptance of interpretations of law by the General Counsel as being consistent with Congressional intent.

9. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

No employee complaints have ever been brought against me.

My basic philosophy of supervisor/employee relationships is to treat everyone with professional respect, courtesy, and dignity. I assume that people are competent and responsible (unless and until they demonstrate otherwise), and I believe in rewarding and promoting those who excel. In general, I believe that people respond better to positive encouragement than to criticism, but some balance of the two is sometimes necessary. Because no one person can do everything that is important, I also believe in teamwork and collaboration, with open and frequent communications (including "bad news" as well as "good news"). In general, success is usually the result of joint efforts, and calls for credit to be shared among the team.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

I have had no professional experience working with committees of Congress. If confirmed, one of my goals would be to establish a positive professional working relationship with the committees and members of Congress with regard to any issues of concern that fall within my purview.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

I believe that the General Counsel is the final authority on legal issues with the Department. But the Inspector General has an essential role to play in ensuring that the Department is operating consistent with applicable law and that its programs and activities are not subject to waste, fraud, or abuse. As I understand it, the Inspector General has independent authority to investigate and make recommendations, and to make reports to Congress. If confirmed, I would seek to develop a good working relationship with the Inspector General and cooperate appropriately with his office in the performance of his responsibilities. Because I would share the objective of improving the operations of the Department, I would take seriously and consider carefully any recommendations made by the Inspector General.

12. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

There are a number of rulemaking proceedings underway within the Department of Transportation. The General Counsel has a primary responsibility to ensure that the Department's actions, including regulatory actions, are authorized by law, and consistent with both the letter and spirit of the law as enacted by Congress. If confirmed, I intend that my office would pursue that responsibility appropriately. If confirmed, I will work closely with Members of the Committee and other stakeholders to ensure that their views as to the intent of Congress are sufficiently considered.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

The General Counsel needs to pursue the legislative priorities established by the President and the Secretary. In that regard, I understand that almost every operating administration within the Department is operating under lapsed authorizations and would benefit from final action on the reauthorization legislation pending in the 108th Congress. Perhaps most significant is final action on the funding authorities and programmatic changes for the Federal Aviation Administration, where a four-year authorization would provide a firm foundation for modernization of the national airspace system. Comparably, Congressional action on a long-term renewal of "TEA-21" authorities for the surface modes is needed, hopefully by early next year. Also, the Department as a whole would benefit from final action on full-year appropriations for Fiscal Year 2004 before the adjournment of the First Session, and the Maritime Administration could benefit from legislation being developed to extend the Maritime Security Fleet Program. In addition, the Secretary has proposed legislation to address future aspects of the intercity passenger rail system. I anticipate that other legislative needs and initiatives will arise during the upcoming years, and, if confirmed, I will be prepared to advise the Secretary and work with the Congress to pursue beneficial legislative action.

14. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation.

My general understanding is that as a percentage of its total grant spending, the Department has a relatively small percentage of funds over which it has discretion, and as to those, some funds are earmarked by Congress for specific projects. If confirmed as General Counsel, I would not expect to have major direct responsibility for the allocation of discretionary spending. But to the extent that I could be helpful

to the Secretary in pursuing the most cost-effective spending based on national priorities and objective and publicly-stated criteria, I would do so.

The CHAIRMAN. Thank you very much, Mr. Rosen.

Mr. Gallagher, as you know, we will be militarily involved, in one way or another, in the war on terror for a long period of time. I think we all know and appreciate that. And I know you were involved in forging an agreement earlier this year between the Department of Defense and private industry to share spectrum in a manner that'll protect sensitive military functions while providing more opportunities for WiFi services. What lessons did you learn, and what more do we need to do in this area? As we all know, one of our greatest vulnerabilities is our telecommunications systems.

Mr. GALLAGHER. Thank you, Mr. Chairman, for that question.

It was a privilege to work with the Department of Defense on that particular spectrum matter. It was particularly difficult, but it was really a team effort that included the engineering staffs of the FCC, private industry, and the Department of Commerce, and our own Office of Spectrum Management at NTIA. The collaborative work of those entities and those groups was able to double the amount of spectrum for WiFi, at 5 gigahertz, at the same time we protected very sensitive military operations in the 5 gigahertz band.

What made that accomplishment particularly satisfying is that it, in very short order, became an international standard through our advocacy and collaboration with private industry, with the Department of Defense, with NASA, and with the Commission at the World Radio Conference this summer. And we now have a single allocation and a single technical framework that will allow that to go forward.

And I would say that there were probably three key learnings that came from that exercise. First is trust the engineers over the lawyers.

[Laughter.]

Mr. GALLAGHER. Our technical focus was very, very heavy on engineering and very, very light on the lawyering and on the public-relations aspects. And when you have professionals, like the folks in our Office of Spectrum Management, in the Office of Engineering and Technology at the Commission, and the experts from the private sector, we find that they speak a common language that is liberated by today's technologies.

I'd say that the second component would be trust. We had worked together with the Department of Defense credibly in how we dealt with the very difficult issues of finding additional spectrum for advanced wireless services, or 3G. We had also worked together figuring out a way to authorize ultrawideband devices in this country. And in the context of those discussions, we were able to build a rapport and trust that focused us on what served the American people the best.

The Secretary of Commerce told me early on, when I arrived at the Department of Commerce, he said, "Mike, when you're working on these spectrum matters," he said, "you'll be having to make a choice between advancing our economic security as a country in our economy versus advancing our national security. My direction to you is: Do both." That leadership provided by the Secretary was the

third component. When you have strong direction from above, from the Secretary of Commerce, the Secretary of Defense, Chairman Powell, to his staff, expecting that these results will occur, there is clear responsibility. Then you're able to get to the type of result, which not only allowed the Department of Defense to continue operating, but also authorize a new technology, which will create jobs, which will continue to put the U.S. at the leading edge of competitiveness, and also will provide, in response to the last part of your question, additional telecommunications capability in the event of any challenge or disaster. It's another pathway for people and devices to connect with one another.

The CHAIRMAN. Thank you.

Ms. Halpern and Ms. Courtney, from time to time there are allegations that the CPB, slash, PBS NPR have an ideological bias. I hope that in your exercise of oversight, you will make sure that there is no substance to those allegations.

Ms. Courtney, you've had extensive experience in this business. We intend to introduce reauthorization of the CPB early next year, and hopefully get it approved by the Congress and signed by the President. What input would you have in additional or deletions that need to be made in reauthorization of the CPB?

Ms. COURTNEY. Well, of course, our eternal problem is we're always short of funds. That's fundamentally it. But as I was listening to the conversation today about new technology, I realized the digital conversion has offered tremendous opportunity for us, but at great expense. The whole world that we're existing in has changed, and I think maybe we need to look at that. Examine such things as multi-casting and data transfer. Many of us are involved, for instance, in homeland security because we operate interconnecting networks. We operate the Amber Alert for the entire state of Louisiana. We have spectrum that should be used for good public service, and we want it to be. So I think, the transition from the analog world to a digital environment, allow us to look at that.

The other thing I guess I would say is simply that I think public broadcasting—the bedrock of public broadcasting, both radio and television, is localism and understanding that it's in the local communities that it really plays out. And I think sometimes we don't understand that on the national level. Some of our national institutions and—I've been on all the national boards, have a different agenda and it's not a question of mistrust or anything; simply a question—sometimes not understanding what happens day to day on the ground. And I hope I can bring that sensibility to bear.

The CHAIRMAN. Well, if you're in favor and emphasize the importance of localism, then are you satisfied with the way that so much funding goes to a small number of major stations, such as the one in Boston and others?

Ms. COURTNEY. As long as they continue—well, actually, what we do is, we choose to air those programs. And as long as they produce NOVA, Masterpiece—

The CHAIRMAN. But they get the funding to produce those programs.

Ms. COURTNEY. They do, but I give them a lot more money from own raised funds in my community, and that would fall apart if we didn't—

The CHAIRMAN. You'd take Louisiana money and send it to Boston. Is that——

Ms. COURTNEY. Basically, yes.

The CHAIRMAN.—what you're——

Ms. COURTNEY. If they produce the programs you want. Because unlike commercial networks, where we just receive the programs, we have input in whether we want those programs or not, so it's a combination of funding from the Corporation for Public Broadcasting, from viewers like you——

The CHAIRMAN. I'm not saying there's anything wrong with it——

Ms. COURTNEY. Right.

The CHAIRMAN.—but I don't know how that helps localism.

Ms. COURTNEY. Because—well, one of the things we should always have—and Cheryl alluded to this—is that we should have outreach. It's not enough to do just a program. If you're doing something on Alzheimer's, we should have outreach funds to make sure we can touch the local communities with this program. It's not enough to do just a television program anymore, and that's kind of the thing we're saying today. It's not just a national broadcast program; it has to have outreach and touch people in every community, and that's something we should do.

You disagree. What?

[Laughter.]

The CHAIRMAN. I hesitate to get into these matters too deeply. But if you're for localism, I think most local station managers would allege that unless they have sufficient funding, it's hard to emphasize that.

But, Mr. Van Tine, I would mention that I have a letter here supportive of your appointment from the CEOs of AirTran Airways, America West Airlines, Frontier, Jet Blue, Midwest, Southwest, and Spirit Airlines. And, without objection, that letter will be entered for the record.

[The information referred to follows:]

November 3, 2003

Hon. JOHN MCCAIN,
Chairman, Senate Commerce Committee,
United States Senate,
Washington, DC.

Dear Mr. Chairman:

On September 18, the President announced his intention to nominate Kirk Van Tine as Deputy Secretary of Transportation. Based on our collective and individual experiences with him, we believe he would make an excellent Deputy Secretary of Transportation and urge you to proceed with the confirmation process to fill that vitally important position.

While Mr. Van Tine was General Counsel at the Department of Transportation, he was devoted to the mission of the Department, particularly enhancement of airline competition, open markets and the restoration of service following the tragic events of September 11, 2001. During his tenure as General Counsel, we found Mr. Van Tine to be consistently even-handed and objective while he worked tirelessly to address the issues facing the airline industry. While we did not necessarily agree with all Department decisions in which Mr. Van Tine was involved, he carefully listened to all positions, engaged in constructive government/industry dialogue, and acted with great integrity. He pursued constructive steps for the benefit of *all* carriers.

As the airline industry continues on the fragile road to recovery, it is essential that Mr. Van Tine be allowed to bring his experience and knowledge to the Depart-

ment, so that he can help lead the Department's efforts to address the needs of consumers, communities, and airlines.

If there is anything further we can do to assist the Committee in the nominating process for Mr. Van Tine, please let us know.

Sincerely,

Joseph Leonard
Chairman & CEO
AirTran Airways, Inc.

Jeff Potter
President & CEO
Frontier Airlines, Inc.

Timothy E. Hoeksema
Chairman, President and CEO
Midwest Express Airlines

Jacob M. Schorr
President and CEO
Spirit Airlines

Doug Parker
Chairman, President and CEO
America West Airlines

David Neeleman
CEO
JetBlue Airways Corporation

Herb Kelleher
Chairman
Southwest Airlines

cc: Majority Leader Bill Frist

The CHAIRMAN. Mr. Van Tine, let's talk about Amtrak just for a minute. It's a very controversial issue. Numerous administrations, not just this one, have tried to institute reforms. One of the few benefits of being on this Committee for a long time is you accumulate a history of attempts at reform all being fought off, and then more money, and then administrators of Amtrak—and I would say, with the notable exception of the latest one—saying, "We're on the glide path to economic self-sufficiency." I'm sure you may have heard those from previous administrators. I believe, if my memory serves me correct, it was 1973 when Amtrak was formed, and within 3 years it was going to be financially independent. It's been 30 years, a little over 30 years, since that promise was made. And yet we seem, even with the present administrator, unable to impose even the cancellation of one route, because, in his words, Mr. Gans says it's, quote, "political." Well, it's political, but it's also financial, because my constituents have to pay for Senator Lautenberg's extensive network, which is heavily subsidized, and so there's a certain fairness issue here.

As much as I support and want a viable Northeast Corridor, I don't think it's viable in my home state of Arizona. I wish it was. But I'd like to have some of your thoughts about how we can go about the business of reforming Amtrak, or are we just doomed to the annual exercise, which we do around here—the Administration, whether it be this one or previous Administrations, will propose a certain amount of money, which will be immediately condemned as insufficient, which will then be responded to as not having any reforms being made, which will then be responded to by saying that the system is about to collapse and is unsafe, and we end up in the same gridlocked position that we are in today.

And so I'd—maybe I'd like to have a few of your views on that issue, and then maybe we'll move on to—

Mr. VAN TINE. Senator McCain, I don't have the history with the issue that you do, but I've read the history, and I understand everything you're saying, and I think your last point is one of the Department's central concerns this year. I think we would like to break out of that cycle where there is an annual crisis and we have to resolve that crisis at the last minute to keep Amtrak operating.

And the only way to do that is to reach some agreement on a longer-term authorization.

My first experience with Amtrak was in connection with the \$100 million loan that the Department was asked to give Amtrak in 2002. And, as you know, we ended up giving Amtrak that loan. It was a very difficult process, though. We worked very hard to get that done, and one of the reasons it was difficult, because Amtrak's accounting was not in the condition it should be, and that it's—

The CHAIRMAN. That wasn't just your opinion. That was of the DOT IG, among others.

Mr. VAN TINE. Yes, sir. And it was also the opinion of their independent auditors. And their financial reporting was not in the condition it should be. And I think that, you know, we start with the fundamental principles that Amtrak should be honest with Congress in its financial reporting, Amtrak's accounting should be understandable and transparent, and that Amtrak's management should be as efficient and businesslike as possible. I think those are principles that we all should be able to agree on.

I think the core issue right now, though, Senator, is whether we can find a way to match up the service that we provide with the needs and desires of most people in the country, and that's where there is a mismatch right now, and I think that's what you're getting to in your comments about Amtrak service. I know that Phoenix, for instance, doesn't have any Amtrak service, and you seem to do all right.

But there are other ideas about this. I know that there are ways to go about this process of matching up, besides cutting routes. Perhaps there are other ways to arrange things. The system is virtually unchanged from when it was created, about 30 years ago, and it's the one transportation system in the United States that has not kept up with the times, I guess, and the needs and desires of the American people.

And those are, sort of, my fundamental thoughts at this point, Senator.

The CHAIRMAN. Well, thank you. And, Mr. Van Tine, I just want to emphasize again, I don't mind using my constituents' tax dollars to subsidize the Northeast Corridor. They fly to the East Coast, and hopefully would make use of that service if it was suitable.

What I do mind is asking them to contribute an unending amount of money, with no end in sight, which was promised 30 years ago after 3 years. And that's the aspect of it that I find disturbing, and I hope that we will be able to reach some conclusion. But, in the interest of straight talk, I don't think we will.

Senator Lautenberg?

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

Our Chairman is a very distinguished American and Chairman and Member of the U.S. Senate—

The CHAIRMAN. Look out.

Senator LAUTENBERG. And he—

The CHAIRMAN. Look out.

[Laughter.]

The CHAIRMAN. Here we go.

[Laughter.]

Senator LAUTENBERG. We're getting close to the edge of the cliff.

[Laughter.]

Senator LAUTENBERG. But being—there are virtues to being on this Committee for a long time. You get to be Chairman. That's one of the significant assets.

The CHAIRMAN. If you choose to run for re-election.

[Laughter.]

Senator LAUTENBERG. But it's always with a good nature, but it's sometimes different in viewpoint. And, you know, one of the things that the people in New Jersey holler a lot about is the fact that we are 49th among states in return on the Federal tax dollar—49th among states—so we give out a lot more money than we get.

Now, it's fair to say that some of that has got to be included in water rights for western states, some of it's got to be included in the national aviation system, some of it's got to be involved with the national transportation system generally. So I quickly point out, in addition to sending all that money to the Federal Government, that New Jersey has contributed over one-and-a-half billion dollars in the last decade to the Northeast Corridor Improvements Program.

And, Mr. Van Tine—I want to say, Mr. Chairman, I think we have a group of excellent candidates across the board, and I have to reconstruct my comment a little bit. Cheryl Halpern—it's not her dad; it's her father-in-law, but she's just as proud. They're a very tight family.

But there has been some significant changes in the structure of Amtrak. We started some years ago in providing electrification to the Northeast Corridor, from New Haven to Boston, and it's made an enormous difference.

And I also want to point out, Mr. Chairman, that last year was the biggest year in Amtrak's history, including going back to its pre-Amtrak ownership days. It had 24 million people that it carried last year. And without overdramatizing, the fact of the matter is that 9/11, which had its most significant effect in our region, New Jersey and New York, was serviced on a continuing basis by Amtrak when nothing else was working—highways or aviation. And it's a national resource, in my view, that has to be maintained.

And, Mr. Van Tine, I listened closely to your comments, and I hope that you will work closely with all the Members of this Committee, but I've not had a lot of good luck, in terms of contact with the Administration, on my point of view about Amtrak or about the privatization of FAA.

Were you, in your previous position, Mr. Van Tine, involved with the development of the reauthorization of the FAA organization?

Mr. VAN TINE. Not substantially, Senator Lautenberg.

Senator LAUTENBERG. You know that some states were made exempt from privatizing their——

Mr. VAN TINE. I'm aware of the history of the bill, and I understand what's happened in——

Senator LAUTENBERG. Yes.

Mr. VAN TINE.—in that regard. My role——

Senator LAUTENBERG. What a coincidence it is that the Chairman of the House Committee on Transportation had the two Alaskan airports removed from the possibility of privatization as the bill worked its way through. It wasn't included in the original

House bill, but it got—somehow or other, it found its way in there. And it's my understanding that there are others that are protected from privatizing or turning commercial with the FAA. And I hope that you're going to look closely at that and that we'll be able to discuss it.

Now, this year the Administration proposed that Congress appropriate \$900 million for Amtrak, and at the same time \$300 million for Iraq's railroads. Now, Iraq is a place that has developed a lot of controversy, a lot of pain, a lot of anguish, but it's ironic, I think, that we should spend \$300 million for railroads in a country the size of California, and it's proposed that we simply spend \$900 million for the entire rail system, passenger rail system, city-to-city, in our country. So does this—do you think this indicates the Administration's commitment to passenger rail service in the United States?

Mr. VAN TINE. Senator Lautenberg, first I want to say that I understand your concerns, and the Department understands your concerns, and I want to assure you that, if confirmed, I would like to sit down and talk with you about all your concerns. But on the specific \$900 million number, it's my understanding that that number is the Administration's estimate of the operating—the number necessary to cover the operating expenses and the debt service for the coming year. And the intent is to open the debate, the dialogue, on how to resolve Amtrak's problems and the broader issue of intercity passenger rail this year, rather than, as Senator McCain was saying, to limp along from year to year with the same drama playing out each time. We'd like to make a serious effort this year to try and achieve some consensus.

Senator LAUTENBERG. Well, in your comments, you noted how closely you work with the IG, with the Inspector General.

Mr. VAN TINE. Yes, sir.

Senator LAUTENBERG. He happens to be sitting here. He's a familiar face to all of us, and he's the conscience for many of us. And the disparity between his proposal and the \$900 million, he offered a rather gloomy perspective and said that the railroad couldn't survive.

Now, (a) is he just wrong, and, (b) do you consider that the national passenger rail service is a critical element of our transportation system, or is it just a regional service that ought to be taken care of locally?

Mr. VAN TINE. Well, as I said, Senator, the Administration is committed to support for national passenger rail service, and I think everybody believes that it is important. It's more important, clearly, in some parts of the country than in others, and people are willing to support it more in some parts of the country than in others, and we need to find a way to try and match up the support for the system with the funding that we give it.

On the number that the IG has come up with, I'm aware of what the Inspector General has talked about with respect to Amtrak. I think that, in general, the views of the Administration are in line with the views of the Inspector General, as far as the structure of Amtrak. I think the Inspector General may have included some additional elements in the calculation of the number that he pre-

sented beyond those that were included in the President's budget proposal.

Senator LAUTENBERG. Are you——

The CHAIRMAN. Senator Allen?

Senator LAUTENBERG.—are you aware of any——

The CHAIRMAN. Senator Allen? Your time has expired. We'll have a second round——

Senator LAUTENBERG. OK.

The CHAIRMAN.—if you'd like, Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Allen?

Senator ALLEN. Thank you, Mr. Chairman.

Let me first address you, Mr. Gallagher. And welcome to your family, especially—what is it, your father-in-law, the first time he's been——

Mr. GALLAGHER. It's my grandfather, yes, sir.

Senator ALLEN. Grandfather, first time east of Nevada. This is not typical weather, sir, at this time of year, but you've brought some good, dry weather with you.

I'm going to first commend the Department of Commerce and the Secretary for what you've been able to do on so many issues that are vital to the future competitiveness of our country and communications and issues which, Mr. Chairman, this Committee has been advancing most recently.

Number one, working with the FCC on the WiFi spectrum issue, that was one that had bipartisan support, and that is just a tremendous advancement in opportunities for people to get broadband wirelessly within their home, carrying around their laptop like they do a cordless phone, rather than having wires all over. But getting that certain part of the spectrum was key to having that develop, and I think that has great promise. Also, we're going to be working with you, and I look forward to, on the issue of piracy, cyber-security, and also protecting children on the Internet.

Now, speaking about the Internet and the economic digital divide, one, I would hope you can get the Secretary of Commerce and the Bush Administration to change their views on a bill that passed with great support here, and that has to do with improving the technological capabilities and infrastructure in minority-serving institutions. The Chairman, Senator Lott, and others—it was bipartisan support—supported this effort, where your own reports will show that minority-serving institutions do not have the technological capabilities and infrastructure that they need to attract the professors, much less provide that technological training and education to students who then can go out there in the real world and get those good-paying technology jobs, rather than us having to import workers to do that job. And I would hope that you would change your position. It's over in the House. If there's something that could be worked out, let's get it done, because this is important for technology, education, and opportunity, and a very good way to help alleviate that economic digital divide.

Now, we're also going to be bringing up, this week, on Thursday, another digital divide issue, and that is the Internet and whether or not broadband and Internet access ought to be taxed. Would you share with us what your secretariat's view is of S. 150, which

would permanently place a moratorium on the Internet-access taxes in this country? And if you want to make any comment on the measure for minority-serving institutions, you're welcome to do that, as well.

Mr. GALLAGHER. Well, thank you, Senator Allen, for those kind words and for recognizing my grandfather.

The first thing I would like to say is, thank you for your leadership on keeping the parties in the WiFi issue in the room and engaged. There were many dark days when it wasn't clear that we would find an answer, and I do think that the leadership coming from this Committee and from yourself and the cosponsors of that legislation was very helpful in getting that accomplished.

I would also like to assure you, with respect to the Internet and the need for it to be accessible to higher levels of education and in poor and underserved areas, the Administration, remains committed to those ideals. I am aware of the opposition to the legislation that you speak of, and I am happy to carry your concerns back to the Secretary today. And, if confirmed, I look forward to working with you on those issues going forward.

With respect to the Internet tax bill, the Secretary, I believe, has written four letters in support of, maintaining and holding the line on the non-taxation of the Internet. And, in fact, the President, not last August, the August before, in Waco, Texas, said, "If you want something to grow, don't tax it." So the Secretary remains strongly supportive. It is a very high priority of his to see that we maintain the growth of the Internet by keeping the access to it non-taxed, so that areas to the Internet can continue to expand to the less privileged. Because when you tax something, you increase the price of it; if you increase the price of it to those that can least afford it, then, in fact, they are being left behind. So there are a number of good, strong economic reasons and social reasons to maintain the moratorium that's in place today, and we do appreciate your leadership in that cause.

Senator ALLEN. Well, we'll need your help on Thursday, as the Chairman, with his great leadership, will be helping assist us in trying to make sure that's a permanent moratorium.

Mr. GALLAGHER. If confirmed by Thursday, I'm happy to get right into it.

Senator ALLEN. Get to work.

[Laughter.]

Senator ALLEN. Real quickly, Mr. Van Tine, one thing that I'll be wanting to work with you on is—insofar as passenger rail, and that's high-speed rail. Generally speaking, rail, passenger rail, is regional from population centers. From the days I was Governor of Virginia, working with the Governor of North Carolina, we wanted to get high-speed rail through Richmond on down to Charlotte. And to the extent that we can get that linked up with the Mid-Atlantic and Northeast, I think there is the population density to support it, and I look forward to working with you on it.

And thank you, Mr. Chairman, for holding this hearing. I look forward to voting for all of these nominees, as my time expires.

The CHAIRMAN. Senator Lott?

**STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Thank you, Mr. Chairman.

Mr. Gallagher, Ms. Halpern, Ms. Courtney, and Mr. Van Tine, and Mr. Rosen, thanks to all of you for your willingness to go through this process and to serve your country. And to your families and friends that are here, get ready for some long hours for these people. But we do appreciate, you know, the sacrifice that is required to serve in these positions—except maybe for the Corporation for Public Broadcasting, that's all fun there.

[Laughter.]

Senator LOTT. Mr. Van Tine, I read your statement, and I appreciate the opportunity to have met with you earlier. I think the Department of Transportation is one of the most important departments in the Government, and I think sometime it doesn't get the attention and the credit that it deserves.

Obviously, we're very interested in the FAA reauthorization, we're interested in the Amtrak issue that you're working on. We need a highway bill. You're talking about jobs creation. If we could get this \$60 billion FAA reauthorization done and a highway bill done early next year, they could lead to an awful lot of construction activity. And so I hope that you will work with us, as I know you want to, to achieve both of those goals of passing those two important—actually, all three issues.

On Amtrak, I have been very supportive of Amtrak in the past. I'd like to continue to be, but I am concerned about a number of issues this year that have caused me to have to reevaluate exactly how we're going to proceed in the future.

You're a lawyer. There's three lawyers at the table. I have a law degree. I don't know whether I would call myself a lawyer anymore. It's just really amazing that when you're involved in the process of making the laws, you lose your ability to be a lawyer.

[Laughter.]

Senator LOTT. But there are some things about our profession that are not always attractive. We do sometime get to be a little bit too caught up in legal niceties, and we do get a little confident in the correctness of our position. And I think maybe you have portrayed that in the past, Mr. Tine, to be quite honest about it. And you're going into a different position. Deputy Secretary. I mean you're going to be involved in an awful lot of the key activities on a day-to-day basis, working, of course, with the Secretary and the Administration, but it's going to be very important that—you know, when you're confirmed, that you use your very best diplomatic skills and less of your legal skills, as you have had to in the past.

Would you like to just respond to that? I'd give you an opportunity to defend yourself against some of the charges that have been leveled against you, without being so direct about it.

Mr. VAN TINE. Thank you, Senator Lott, for the opportunity.

I understand what you're saying, completely. And I just would like to say that as general counsel, one my functions, one of my primary functions, was to serve as the chief advocate for the Department's legal positions. And I didn't always make the decisions, but I had to defend the decisions. And that was the job that I got paid to do, and, for 2 years, I did it.

I think the Deputy Secretary, though, performs a different role in the operations of the Department, and, as I said in my opening statement, I think one of the fundamental responsibilities of the Deputy Secretary is to try to resolve disputed issues and achieve consensus where there are differences of opinion, and I truly believe that. If confirmed, I'd take that responsibility seriously.

Senator LOTT. Well, good luck. And try to not be a hopeless bureaucrat. When you're faced with a decision, make it and move on.

Mr. VAN TINE. I understand your point. Thank you.

Senator LOTT. We'll try to help you.

Now, ladies, the Corporation for Public Broadcasting Board is a very important responsibility, and I want to be quick to acknowledge that most of the public television programs have a high standard of excellence, and particularly children's programming. And in my own state, they've done really a marvelous job. I think probably both of you are familiar with what goes on in the state of Mississippi. I think that really the people have a lot of confidence in what they do there.

And I know, Ms. Courtney, you're from Louisiana. You've had a very interesting background—certainly will bring a good perspective to the Corporation for Public Broadcasting.

I must say, though, over a period of many, many years, I don't think that the Corporation for Public Broadcasting has fulfilled its responsibilities sufficiently under the Public Telecommunications Act of 1992. Section 19 on Objectivity and Balance Policy states that there will be strict adherence to objectivity and balance in all programs or series of programs of a controversial nature. I know you've been trying to kind of smooth out the rough edges and work with that, but the perception is still, of a lot of people, me included, that you still have some programs that clearly are not balanced and objective, and they're not balanced on the individual program, and they're not balanced overall.

And I specifically want to refer to the NOW with Bill Moyers. I mean, I certainly think he's the most partisan and unobjective person I know in media of any kind. And so I'll give you the first opportunity, Ms. Courtney, to respond to this. Do you think that he's objective and balanced? And if there's—the answer is no, which obviously he is not, and if you think you—

[Laughter.]

Senator LOTT.—if you think he is, I'll refer you to his piece on November 8, 2002, how he responded to the election. And I think it's the most blatantly partisan, irresponsible thing I ever heard in my life. And yet you all have not seemed to be willing to deal with Bill Moyers and that type of programming.

Well, I'm out of time. I'd just like maybe both of you to respond to that overall question.

Ms. HALPERN. Let me take the first—

Ms. COURTNEY. Let's let Cheryl do the first—

Senator LOTT. Oh, you're getting off to a good start, going to refer to the senior member.

Ms. HALPERN. The fact of the matter is, I agree with you, and there is a problem here, because the CPB is in a unique position.

Senator LAUTENBERG. Bring the mike a little closer.

Ms. HALPERN. The CPB is in a unique position. On the one hand, the statute requires the support for programming that is objective and balanced, while, at the same time, the statute prohibits the CPB from interfering with local station operation or controlling editorial content.

So there is a dilemma here. Furthermore, if I can be anecdotal about my service on the Broadcasting Board of Governors, where the entire funding for the international broadcasting entities is provided by the U.S. Government. So when there were allegations of impropriety and violation of the journalistic code of ethics, we were able to aggressively step in, review the transcript of the potential violation, and initiate penalties and change accordingly. The CPB cannot, in this construct, similarly engage or penalize the individual licensees that choose to air programs, nor can we impact the individual programs, because we are not the sole funders of those endeavors.

So I'm as frustrated as you when I get communications from the Pro-Israel community, for example, about perceived imbalance with NPR, but there is so very little that the CPB can effectively do to correct the situation.

Senator LOTT. My time has expired. I'll come back.

The CHAIRMAN. Ms. Courtney, you need to comment on this.

Ms. COURTNEY. Fine.

The CHAIRMAN. And I think it's important we get your views on this.

Ms. COURTNEY. Right. When I served on the PBS Board, I was surprised that the policy was fair and balanced across the schedule, because my training is as a journalist, and I feel it should be fair and balanced within a program, because people don't watch programs 24 hours a day. So I am adamantly opposed to any approach like that. I believe it should be fair and balanced and equal opinion, but I'm an old-school journalist.

We have a new situation in the world of journalism today. It appears that a lot of people have opinions. I believe opinions should be—be they right or left, I think opinions should be clearly labeled as opinions. I think reporting should be clearly fair and objective and balanced. And that's my—has been consistently my opinion.

On a personal anecdotal note, I'm the recipient of all the complaints from the viewers in my state when some national news programs generally point out Louisiana as the source of all environmental pollution. We are generally the poster child of all that's wrong. And so if I don't get a heads-up from PBS, so I'm on ground zero responding to people.

Consequently, one of the things broadcasters have to do, at the local level, is to make sure that we then have additional programs that address issues that get other perspectives. That's our responsibility, as well. So you're going to get a traditional journalist, if you get me on the Corporation for Public Broadcasting, who believes in fair and balanced and objectivity in programming.

The CHAIRMAN. Well, that may be an issue that should be addressed in one way or another, Senator Lott, as we move to reauthorization of the CPB. If Ms. Halpern's views are correct that the CPB really has no influence over that, what's the point in having

a Board of Directors? So I think it might be a subject in hearings when we move to reauthorize the CPB.

We hear about it a lot on both sides of political spectrum, not—you hear the complaints from the conservative side, and another major network on the liberal side. So——

Senator Lautenberg?

Senator LAUTENBERG. Yes, Mr. Chairman, just a couple more things that I'd like to call attention to, and that is the national obligation to support a national rail, passenger rail, system. It's not different than supporting other programs, like essential air service, where we have little or not interest. But my constituents contribute significantly to providing that service. My constituents are unhappy to know that New Jersey contributes a dollar to the Federal well-being, and gets back 66 cents worth of values. Arizona is a fortunate place, because they—for every dollar they put in, they get back \$1.21. But we all have to share——

The CHAIRMAN. What is that—excuse me—what is that statistic on?

Senator LAUTENBERG. That's the general return of Federal tax dollars that are——

The CHAIRMAN. You know, that's just simply, patently false, but it doesn't matter.

Senator LAUTENBERG. Oh.

[Laughter.]

The CHAIRMAN. Please, go ahead.

Senator LAUTENBERG. Well, I——

The CHAIRMAN. We don't get that money back.

Senator LAUTENBERG. Where did we get that information? The Tax Foundation is the author of this, as well as the——

The CHAIRMAN. Yes, the Tax Foundation is wrong.

[Laughter.]

Senator LAUTENBERG. And I want the record to show exactly what I am saying, because this is not an unusual difference that we go through here. And I also feel free to express a view, as long as it's annotated, that there's a challenge to it. We've had this discussion before, and I was right before, and I'll be right again here.

[Laughter.]

Senator LAUTENBERG. Mr. Van Tine, how do you feel about the privatization of FAA?

Mr. VAN TINE. Well, I presume you're talking about the contract tower program, Senator Lautenberg——

Senator LAUTENBERG. No, not the contract tower, specifically, but taking away the inherently government umbrella under which FAA operates.

Mr. VAN TINE. My role in that process to date, as general counsel, has been simply to ensure the legal sufficiency of the Department's actions, and I was satisfied that legally the Department's actions were correct.

The Secretary has explained the Administration's position on that issue on a number of occasions, and I support the Administration's position.

Senator LAUTENBERG. Are you aware of any—going back to the railroad situation—are you aware of any large-scale rail system in any country that operates without subsidy, substantial subsidy?

Mr. VAN TINE. Well, I'm not an expert in world railroads, Senator, but I—just offhand, no, I'm not. But I would like the opportunity to discuss that with you further.

Senator LAUTENBERG. All right. I think these two questions that I've raised in no way, Mr. Van Tine, challenge your character or your ability to serve. I just would love to change your mind about a few things.

[Laughter.]

Senator LAUTENBERG. And, Mr. Chairman, with that—I would just ask our two friends, who are going to go to CPB, I guess it is, and—how about the fundraising part of it? You have to do it. We've all done it in our past. Sometimes we're sorry for it, but the fact is that you have a significant source of revenue there. Do either of you have any ideas on how that can be improved, in terms of volume of dollars received?

Ms. COURTNEY. I suppose you're referring to our endless program fund drives, we call Pledge Drives, membership campaigns—

Senator LAUTENBERG. I'm not complaining about them, because I think the public ought to be more supportive.

Ms. COURTNEY. Right. Yes. People sometimes run when they see me coming, because they think I'm going to collect on their pledge of support, because I've been on the air for so many years. And we are trying to be more varied in our approach to these.

One of the things we don't like to do is change our programming schedules. But, unfortunately, it seems that music is what touches people's souls, and so, consequently, music programs, be it, you know, nostalgia, songs from the 1960s or whatever, are what people pledge around. But we're trying to change things from a transactional sort of relationship to investing in an institution. And our greatest success has been when we do things that are particularly relevant in our communities. And I know that's true of my colleagues across the country. Mississippi does something particularly about Mississippi; people respond to it. We do—I know that the wonderful series out in Arizona on—that they've been doing for a long time is—it's a big fundraiser. And New Jersey has particular programs that they do. So we've been finding great success in producing programs about our local communities, and I think those—I think that's the future. You know, connecting to people personally.

And, frankly, with my history series, we have lots of ancillary products, books and DVDs. We provide them to schools, but then we also offer them for sale, and they've been a tremendous revenue source, frankly. And so I think we're going to have to be entrepreneurial at the same time we're mission-driven.

Senator LAUTENBERG. I would close with this. Ms. Halpern, you noted that the Jewish community would—is one that might call up and complain. Are they the only community that issues an occasional complaint about a bias one way or the other?

Ms. HALPERN. No. Quite frankly, the conservative community is rightly concerned about Bill Moyers and that type of programming. The Pro-Israel community has been concerned about alleged impropriety with National Public Radio, specifically with respect to the Middle East and its alleged imbalance, apropos Palestinian portrayal versus Israeli portrayal. But, nonetheless, there has to be

recognition that an objective, balanced code of journalistic ethics has got to prevail across the board, and there needs to be accountability when that fails, that the individuals who are subsequently judged to be guilty, of impropriety be, in some measure, penalized.

As I said, you know, going back to my BBG days, we were able to remove somebody who had engaged in editorialization of the news at Radio Liberty from that position. But then the BBG was the sole measure of support financially, and we had the control in order to so engage.

And going back to what Senator McCain said, with reauthorization, I think perhaps there needs to be a review, and the CPB, if possible, should be given more clout, so to speak, to hold programming to, measures of accountability. Whether that's, in fact, doable is pure speculation on my part, but there definitely needs to be accountability in the system.

Senator LAUTENBERG. And were those people removed with handcuffs, that man, you said, physically removed? Was he—

Ms. HALPERN. They were—no, it was a woman, who was—

Senator LAUTENBERG.—removed in handcuffs.

Ms. HALPERN.—given a job, where she was not allowed to editorialize.

Senator LAUTENBERG. Thank you.

Senator LOTT. Mr. Chairman—

The CHAIRMAN. Let me just point out—I don't know what it has to do with anything, but according to the Federal Highway Administration, the State of Arizona gets 87 cents back for every dollar that it sends to Washington in the form of gas tax dollars. But it really is not relevant.

Senator LOTT. I want to thank you for that, because we get some of that money over in Mississippi.

The CHAIRMAN. I was going to say that Mississippi—oops, Mississippi is down to 96. You're not doing your work.

[Laughter.]

The CHAIRMAN. Do you want to say something else, Senator Lott?

Senator LOTT. Well, I think Ms. Courtney wanted to comment. Did you want to comment?

Ms. COURTNEY. I was just going to add, we really are terribly responsive to the public in public broadcasting. I have to tell you, I'm not so worried about a board saying, "You're not right," or, "You're wrong." Believe me, the public will tell me. I have three boards of directors. I have the 501(c)(3)'s, our friends group, a foundation group, our governing authority. We get tremendous input. And I guarantee you, if there's a program that people are unhappy with, we'll hear about it.

I want you to really understand that, you know, we really are responsive to it, because people connect to us with—at the state level, the state legislatures, they connect with their dollars in pledge drives. We have wonderful community advisory groups. And we really vary across the country because of communities—

The CHAIRMAN. But what percent of your overall funding comes from—

Ms. COURTNEY. The CPB?

The CHAIRMAN.—the Federal Government?

Ms. COURTNEY. In Louisiana, 9 percent.

The CHAIRMAN. Nine percent comes from the Federal Government.

Ms. COURTNEY. And it's—

The CHAIRMAN. Ninety-one cents is from local contributions.

Ms. COURTNEY. —or from state appropriated money.

Senator LOTT. Mr. Chairman, if I could, let me, again, say, Ms. Halpern, I thank you for the job you've already been doing, and I can tell from Ms. Courtney's comments she's going to be a very positive addition to the board, and I think the experience you had at the state level will be very helpful.

Going back to what you were saying, though, earlier, I feel good about the state operations, whether it's New Jersey, Arizona, or—my own state of Mississippi has refused to run some of the programming over the years if they thought it was offensive. So that is being done, I guess, state by state. The problem is still up here, I think. Some of the stuff that's fed down there still needs a lot of review and a continuing effort to balance it. And I know that effort has been underway for years, but you still have a way to go.

[Laughter.]

Senator LOTT. And I hope you ladies will, you know, continue to work in that direction.

Ms. Halpern?

Ms. HALPERN. If I can just close, one of the things the CPB has instituted in order to reconcile the tension between these competing statutory requirements was to create a 1-800 number and e-mail address to solicit public feedback about program content. And the CPB does share this information with the Congress and within the industry. The other thing that the CPB has begun to sponsor are handbooks, seminars, and other efforts to help the public broadcasting's journalists do a better objective job. And we can certainly—staff and I can provide more information about these activities if you would so desire.

Senator LOTT. I would like to get that, and I do appreciate it. Thank you very much, Mr. Chairman.

The CHAIRMAN. Well, I want to, again, thank the witnesses for their willingness to serve, and we're grateful. I think you're all highly qualified, and I know this is a wonderful moment for the family members, as well. We look forward to working with you in the future.

We intend to move your nominations as quickly as we can, given the press of the end of session business, but we'll try and move your nominations as quickly as possible.

I thank you, and this hearing is adjourned.

[Whereupon, at 11 a.m., the hearing was adjourned.]

A P P E N D I X

AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION
Washington, DC, October 31, 2003

Hon. JOHN MCCAIN,
Chairman,
Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Chairman McCain:

The American Road and Transportation Builders Association (ARTBA), a 101-year-old trade association exclusively representing the Nation's transportation construction industry, enthusiastically endorses the nomination of Kirk Van Tine to be Deputy Secretary of the Department of Transportation.

Mr. Van Tine possesses an extraordinary intellect and resume, having served his country in numerous ways over the last three decades. He has served in the military, at the bar, and, most recently, in the Federal Government with highest distinction.

ARTBA has worked with Secretary Mineta on a variety of issues for over twenty years, and we remain impressed by the exemplary group of top officials that he and President Bush have assembled at the Department. By rejoining the Department as Deputy Secretary, Mr. Van Tine would make a valuable addition to a team that is fully committed to enhancing the safety, security, and efficiency of the Nation's intermodal transportation network.

ARTBA has found Mr. Van Tine to be open-minded about the concerns of our industry. At the same time, he has taken a rigorous and principled approach to the many issues with which he dealt when he served as the Department's General Counsel. During these challenging times for our nation, it is more important than ever that the Deputy Secretary of Transportation possess all of these qualities.

We hope that the Committee considers and approves Mr. Van Tine's nomination in an expeditious fashion, and that the full Senate confirms him soon so that he can begin work on the many vital matters facing the Department of Transportation.

Thank you for your consideration of ARTBA's position. If you or your staff have any questions, please contact me at any time.

Sincerely,

T. PETER RUANE,
President and CEO.

AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION
Washington, DC, October 31, 2003

Hon. ERNEST F. HOLLINGS,
Ranking Member,
Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Senator Hollings:

The American Road and Transportation Builders Association (ARTBA), a 101-year-old trade association exclusively representing the Nation's transportation construction industry, enthusiastically endorses the nomination of Kirk Van Tine to be Deputy Secretary of the Department of Transportation.

Mr. Van Tine possesses an extraordinary intellect and resume, having served his country in numerous ways over the last three decades. He has served in the military, at the bar, and, most recently, in the Federal Government with highest distinction.

ARTBA has worked with Secretary Mineta on a variety of issues for over twenty years, and we remain impressed by the exemplary group of top officials that he and

President Bush have assembled at the Department. By rejoining the Department as Deputy Secretary, Mr. Van Tine would make a valuable addition to a team that is fully committed to enhancing the safety, security, and efficiency of the Nation's intermodal transportation network.

ARTBA has found Mr. Van Tine to be open-minded about the concerns of our industry. At the same time, he has taken a rigorous and principled approach to the many issues with which he dealt when he served as the Department's General Counsel. During these challenging times for our nation, it is more important than ever that the Deputy Secretary of Transportation possess all of these qualities.

We hope that the Committee considers and approves Mr. Van Tine's nomination in an expeditious fashion, and that the full Senate confirms him soon so that he can begin work on the many vital matters facing the Department of Transportation.

Thank you for your consideration of ARTBA's position. If you or your staff have any questions, please contact me at any time.

Sincerely,

T. PETER RUANE,
President and CEO.

AMERICAN MARITIME CONGRESS
Washington, DC, October 31, 2003

Hon. JOHN MCCAIN,
Chairman,
United States Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Mr. Chairman:

On behalf of the Marine Engineers' Beneficial Association, our Nation's oldest maritime union, and the American Maritime Congress, a research and education group representing U.S.-flagship operators in the domestic and international trades, we are writing to strongly support the nomination of Mr. Kirk K. Van Tine to be Deputy Secretary of Transportation.

Mr. Van Tine, who most recently served as the General Counsel of the Department of Transportation, has a long record of distinguished service as an attorney in private practice for over twenty years where he specialized in complex litigation involving business matters and the Federal Government.

During his tenure at the Department, he has demonstrated a firm grasp of the critical legal and policy issues surrounding transportation, and the public/private sector interaction and partnership that marks all modes of transportation. Particularly in the aftermath of September 11 and the War on Terrorism, the effectiveness of this partnership has become an essential component of our nation's homeland security and our ability to advance America's interest around the globe. We believe that Mr. Van Tine will provide strong leadership, vision, first-hand knowledge, and experience to this position that the challenges now facing the United States require and for which he is eminently qualified.

The Marine Engineer's Beneficial Association and the American Maritime Congress fully support his nomination.

Sincerely,

GLORIA CATANEO TOSI,
President.

ASSOCIATION OF AMERICAN RAILROADS
Washington, DC, November 3, 2003

Hon. JOHN MCCAIN,
 Chairman,
 Committee on Commerce, Science, and
 Transportation,
 U.S. Senate,
 Washington, DC.

Hon. ERNEST HOLLINGS,
 Ranking Minority Member,
 Committee on Commerce, Science, and
 Transportation,
 U.S. Senate,
 Washington, DC.

Dear Chairman McCain and Senator Hollings:

As the Senate Commerce Committee considers the Administration's nomination of the Honorable Kirk Van Tine for the position of Deputy Secretary for Transportation, I would like to voice my steadfast support for this well-qualified nominee.

Mr. Van Tine has a distinguished career and received overwhelming support from the Senate in his nomination as General Counsel to the Department of Transportation. In his current position Mr. Van Tine has been instrumental in the implementation of critical safety and security legislation in the aftermath of the terrorist attacks on September 11, 2001. In my experiences with Mr. Van Tine, I have found him to be objective and thoughtful in all of his decisions in regard to transportation policy. On a personal note, I have known Kirk for many years and continue to be impressed with his work ethic and excellent judgment.

On behalf of the U.S. freight railroad industry, please take my favorable recommendation of Kirk Van Tine into consideration as you review his nomination. It is my belief that Mr. Van Tine will be an excellent Deputy Secretary of Transportation at a time when the Nation is facing critical transportation issues.

Sincerely,

EDWARD R. HAMBERGER,
President and Chief Executive Officer.

ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Alexandria, VA, November 3, 2003

Hon. DANIEL AKAKA,
 United States Senate,
 Washington, DC.

Dear Senator Akaka:

The Associated General Contractors of America (AGC) represents 33,000 construction and construction-related companies in all 50 states, the District of Columbia and Puerto Rico. On behalf of our members, we urge you to join us in supporting the nomination of Kirk Van Tine to be the Deputy Secretary of the Department of Transportation. Mr. Van Tine has the necessary background and knowledge to ensure that the department is as effective as possible, dealing with mature issues such as aviation security, aviation reauthorization, and highway and transit reauthorization legislation. He is equally capable of taking on emerging issues that the Department will face during his tenure.

The integration of the many moving parts that make up both the operations agenda, and the legislative and regulatory agendas of the Department of Transportation require the attention of someone like Mr. Van Tine. He has proven himself time and time again to be a natural and effective leader, and will prove to be a genuine asset in the Department of Transportation. For all of those reasons, he has the full confidence of the Associated General Contractors of America to serve in the capacity of Deputy Secretary of the Department of Transportation.

Thank you very much for your consideration of our views.

Sincerely,

STEPHEN E. SANDHERR,
Chief Executive Officer.

SES/jds

GENERAL AVIATION MANUFACTURERS ASSOCIATION
Washington, DC.

Hon. JOHN MCCAIN,
Chairman,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Dear Chairman McCain:

The General Aviation Manufacturers Association (GAMA) enthusiastically endorses the nomination of Kirk Van Tine to be Deputy Secretary of the Department of Transportation.

Mr. Van Tine's exemplary service to the Department of Transportation as General Counsel proves that he will be a valuable asset to the Department as its Deputy. GAMA has had an opportunity to work with Mr. Van Tine and found him to be open to addressing the issues facing the general aviation industry. We are impressed with his work ethic and dedication to transportation issues.

Mr. Chairman, as you are aware, the general aviation industry has faced numerous challenges over the past two years. Numerous security regulations are changing the way general aviation operates. We need strong leaders at the helm of the Department. Now more than ever our members are relying on the thoughtful leadership of Mr. Van Tine.

We encourage the Committee to consider and approve Mr. Van Tine's nomination in an expeditious manner and that the full Senate confirms him soon. Thank you for your consideration of GAMA's endorsement.

Sincerely,

ED BOLEN,
President and CEO.

GENERAL AVIATION MANUFACTURERS ASSOCIATION
Washington, DC.

Hon. ERNEST HOLLINGS,
Ranking Minority Member,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Dear Senator Hollings:

The General Aviation Manufacturers Association (GAMA) enthusiastically endorses the nomination of Kirk Van Tine to be Deputy Secretary of the Department of Transportation.

Mr. Van Tine's exemplary service to the Department of Transportation as General Counsel proves that he will be a valuable asset to the Department as its Deputy. GAMA has had an opportunity to work with Mr. Van Tine and found him to be open to addressing the issues facing the general aviation industry. We are impressed with his work ethic and dedication to transportation issues.

Mr. Chairman, as you are aware, the general aviation industry has faced numerous challenges over the past two years. Numerous security regulations are changing the way general aviation operates. We need strong leaders at the helm of the Department. Now more than ever our members are relying on the thoughtful leadership of Mr. Van Tine.

We encourage the Committee to consider and approve Mr. Van Tine's nomination in an expeditious manner and that the full Senate confirms him soon. Thank you for your consideration of GAMA's endorsement.

Sincerely,

ED BOLEN,
President and CEO.

November 3, 2003

Hon. ERNEST F. HOLLINGS,
United States Senate,
Washington, DC.

Dear Senator Hollings:

On September 18, the President announced his intention to nominate Kirk Van Tine as Deputy Secretary of Transportation. Based on our collective and individual experiences with him, we believe he would make an excellent Deputy Secretary of Transportation and urge you to proceed with the confirmation process to fill that vitally important position.

While Mr. Van Tine was General Counsel at the Department of Transportation, he was devoted to the mission of the Department, particularly enhancement of airline competition, open markets and the restoration of service following the tragic events of September 11, 2001. During his tenure as General Counsel, we found Mr. Van Tine to be consistently even-handed and objective while he worked tirelessly to address the issues facing the airline industry. While we did not necessarily agree with all Department decisions in which Mr. Van Tine was involved, he carefully listened to all positions, engaged in constructive government/industry dialogue, and acted with great integrity. He pursued constructive steps for the benefit of *all* carriers.

As the airline industry continues on the fragile road to recovery, it is essential that Mr. Van Tine be allowed to bring his experience and knowledge to the Department, so that he can help lead the Department's efforts to address the needs of consumers, communities, and airlines.

If there is anything further we can do to assist the Committee in the nominating process for Mr. Van Tine, please let us know.

Sincerely,

Joseph Leonard
Chairman & CEO
AirTran Airways, Inc.

Jeff Potter
President & CEO
Frontier Airlines, Inc.

Timothy E. Hoeksema
Chairman, President and CEO
Midwest Express Airlines

Jacob M. Schorr
President and CEO
Spirit Airlines

cc: Minority Leader Thomas Daschle

Doug Parker
Chairman, President and CEO
America West Airlines

David Neeleman
CEO
JetBlue Airways Corporation

Herb Kelleher
Chairman
Southwest Airlines

November 3, 2003

Hon. TRENT LOTT,
Chairman, Aviation Subcommittee,
Senate Commerce Committee,
United States Senate,
Washington, DC.

Dear Mr. Chairman:

On September 18, the President announced his intention to nominate Kirk Van Tine as Deputy Secretary of Transportation. Based on our collective and individual experiences with him, we believe he would make an excellent Deputy Secretary of Transportation and urge you to proceed with the confirmation process to fill that vitally important position.

While Mr. Van Tine was General Counsel at the Department of Transportation, he was devoted to the mission of the Department, particularly enhancement of airline competition, open markets and the restoration of service following the tragic events of September 11, 2001. During his tenure as General Counsel, we found Mr. Van Tine to be consistently even-handed and objective while he worked tirelessly to address the issues facing the airline industry. While we did not necessarily agree with all Department decisions in which Mr. Van Tine was involved, he carefully listened to all positions, engaged in constructive government/industry dialogue, and

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Jacob M. Schorr
President and CEO
Spirit Airlines

Doug Parker
Chairman, President and CEO
America West Airlines

David Neeleman
CEO
JetBlue Airways Corporation

Herb Kelleher
Chairman
Southwest Airlines

November 3, 2003

Hon. JOHN D. "JAY" ROCKEFELLER IV,
United States Senate,
Washington, DC.

Dear Senator Rockefeller:

On September 18, the President announced his intention to nominate Kirk Van Tine as Deputy Secretary of Transportation. Based on our collective and individual experiences with him, we believe he would make an excellent Deputy Secretary of Transportation and urge you to proceed with the confirmation process to fill that vitally important position.

While Mr. Van Tine was General Counsel at the Department of Transportation, he was devoted to the mission of the Department, particularly enhancement of airline competition, open markets and the restoration of service following the tragic events of September 11, 2001. During his tenure as General Counsel, we found Mr. Van Tine to be consistently even-handed and objective while he worked tirelessly to address the issues facing the airline industry. While we did not necessarily agree with all Department decisions in which Mr. Van Tine was involved, he carefully listened to all positions, engaged in constructive government/industry dialogue, and acted with great integrity. He pursued constructive steps for the benefit of all carriers.

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Sincerely,

Joseph Leonard
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AirTran Airways, Inc.

Jeff Potter
President & CEO
Frontier Airlines, Inc.

Timothy E. Hoeksema
Chairman, President and CEO
Midwest Express Airlines

Jacob M. Schorr
President and CEO
Spirit Airlines

Doug Parker
Chairman, President and CEO
America West Airlines

David Neeleman
CEO
JetBlue Airways Corporation

Herb Kelleher
Chairman
Southwest Airlines

TRANSPORTATION INSTITUTE
Camp Springs, MD, November 3, 2003

Hon. JOHN MCCAIN,
Chairman,
Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Mr. Chairman:

The Transportation Institute, representing U.S.-flag vessel operators engaged in all aspects of the Nation's waterborne commerce, wishes to express its support for the nomination of Kirk K. Van Tine to be Deputy Secretary of the U.S. Department of Transportation.

Mr. Van Tine has served admirably as General Counsel at the Transportation Department and during that time developed a keen appreciation of the complexities facing the U.S. transportation industries, both internationally and domestically. His performance as General Counsel, as an attorney in private practice for more than 20 years, and as a naval officer have clearly prepared him well to assume this leadership position.

We urge the Committee, and in turn the Senate, to look with favor once again on his nomination. Mr. Van Tine has served the Transportation Department with distinction and will continue to do so as Deputy Secretary.

Sincerely,

JAMES L. HENRY.

cc: The Honorable Ernest Hollings

JLH:rf

UPS CORPORATE PUBLIC AFFAIRS
Washington, DC, November 4, 2003

Hon. JOHN MCCAIN,
Chairman, Senate Commerce Committee,
United States Senate,
Washington, DC.

Dear Mr. Chairman:

On September 18, President Bush announced his intention to nominate Kirk Van Tine as Deputy Secretary of Transportation. UPS does not oppose this nomination and remains neutral in this proceeding.

The Deputy Secretary of Transportation provides a critical role in the function and operation of the Nation's transportation network. UPS looks forward to an expeditious confirmation process by your Committee.

If there is anything we can provide to assist the Committee in the nominating process, please contact me at 202/675-4251. Thank you.

Sincerely,

ARNOLD F. WELLMAN,
Vice President,
Corporate Public Affairs,
Domestic/International.

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
November 5, 2003

Hon. JOHN MCCAIN,
Chairman,
Senate Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Mr. Chairman:

I write on behalf of the 1,500 member organizations of the American Public Transportation Association (APTA) in support of the Administration's nomination of former Department of Transportation General Counsel Kirk K. Van Tine to be the Department's Deputy Secretary.

About APTA

APTA is the trade association for the North American public transportation industry. Its public and private member organizations include transit systems and com-

muter rail operators; planning, design, construction and finance firms; product and service providers; academic institutions, transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

Our Support

During Mr. Van Tine's tenure as the Department's General Counsel, APTA was pleased with the good working relationships we had with Departmental legal counsel responsible for transit, safety and commuter rail issues. We knew that the issues and concerns of our membership would have a fair and balanced hearing, and this was always the case. We are thus very appreciative of Mr. Van Tine's stewardship of the Department's legal team during his time as General Counsel, and believe he served the public interest well in that regard.

The Department has faced considerable organizational change over the past two years, and many critical transportation challenges remain to be addressed. Mr. Van Tine not only served as General Counsel but also worked closely with Secretary Mineta and the Department's leadership team on a range of important national issues. In these difficult times particularly, we believe that continuity and experience are important to maintain at the highest levels of Departmental leadership. We have the utmost respect and confidence in Secretary Mineta, and urge you to support his candidate to be Deputy Secretary of the Department of Transportation.

Sincerely yours,

WILLIAM W. MILLAR,
President.

WWM/cbo

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
November 5, 2003

Hon. ERNEST F. HOLLINGS,
Ranking Member,
Senate Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Senator Hollings:

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About APTA

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the utmost respect and confidence in Secretary Mineta, and urge you to support his candidate to be Deputy Secretary of the Department of Transportation.

Sincerely yours,

WILLIAM W. MILLAR,
President.

WWM/cbo

US AIRWAYS
Arlington, VA, November 6, 2003

Hon. BILL FRIST,
Majority Leader,
United States Senate,
Washington, DC.

Dear Majority Leader Frist:

I am writing to express U.S. Airways' support for three key nominees to positions in the Department of Transportation and to ask for the Senate's timely approval of these candidates. With the current tumultuous state of the commercial airline industry, I believe it is vital that Kirk Van Tine, Jeffrey Rosen, and Karan Bhatia be confirmed by the Senate so they may begin their work at the Department.

Secretary Mineta has demonstrated both his abilities to lead the Department, as well as build a capable and qualified team. U.S. Airways worked closely with Mr. Van Tine in particular during our loan approval process with the Air Transportation Stabilization Board (ATSB) and found him to be fair, objective, and professional while representing the Department of Transportation's interests. I believe he 'Will bring these same qualities to his position as Deputy Secretary of Transportation.

I have great confidence that these candidates will be an asset to the Department as it works with aviation industry partners to continue building a safe and viable air transportation system. Your help in scheduling a vote on their nominations before the Senate recesses for the year would be most appreciated.

Sincerely,

DAVID N. SIEGEL,
President and Chief Executive Officer.

cc: Honorable Tom Daschle
Honorable John McCain
Honorable Ernest Hollings

ASSOCIATED BUILDERS AND CONTRACTORS, INC.
Arlington, VA, November 13, 2003

Hon. BILL FRIST,
Senate Majority Leader,
United States Senate,
Washington, DC.

Dear Senator Frist:

On behalf of Associated Builders and Contractors (ABC), and its more than 23,000 general contractors, subcontractors, material suppliers, and related firms across the country, I am writing today to express our association's support for President Bush's nomination of Mr. Kirk Van Tine to the position of Deputy Secretary of Transportation.

While serving as General Counsel at the Department of Transportation, Mr. Van Kirk has been a loyal ally of ABC. Specifically, his dedication to implementation of Executive Order 13202—which restricts the use of mandatory union-only project labor agreements on federally funded construction projects has ensured that taxpayers' dollars are well spent.

Again on behalf of ABC, I urge your support of Mr. Kirk Van Tine during his confirmation procedures.

Respectfully Submitted,

WILLIAM B. SPENCER,
Vice President, Government Affairs.

CC: The Honorable Ernest Hollings
The Honorable John McCain
The Honorable Thomas Daschle

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO
MICHAEL D. GALLAGHER

Question 1. Your office negotiates and administers the Memorandum of Understanding (MOU) under which many critical functions are delegated to ICANN. Your predecessor also led the U.S. Government delegation to the Government Advisory Committee (GAC) of ICANN. Do you anticipate that if you are confirmed as NTIA Administrator you will be actively and personally engaged in these issues? If confirmed, will you undertake to report regularly to the Senate Commerce Committee on how NTIA is carrying out this role?

Answer. I am committed to fulfilling the role of the National Telecommunications and Information Administration (NTIA) in support of the Memorandum of Understanding (MOU) between the Department of Commerce and the Internet Corporation for Assigned Names and Numbers (ICANN). I consider the implementation of the terms of the most recent MOU a high priority effort in which I will be actively and personally engaged. I will be happy to provide the Committee with reports on NTIA's activities and efforts in this critical area.

Question 2. The Department of Commerce and ICANN recently signed a 3-year extension of the MOU. Under this extension agreement, ICANN explicitly commits to address a problem that is of great concern to me and the Commerce Committee as well: false WHOIS data. WHOIS and similar databases are essential for identifying and locating domain name registrants, especially in cases of security threats, consumer fraud, activities harmful to children, and other misconduct that occurs online, but the database cannot play that role if it is filled with wholly inaccurate contact information, as it is now. Under the MOU extension, ICANN promised to "implement measures to secure improved accuracy of WHOIS data." Can you be more specific about what NTIA will be looking for from ICANN regarding WHOIS accuracy, and explain the steps you will be looking for ICANN to take to fulfill this obligation?

Answer. I share your concerns regarding false or inaccurate WHOIS data. The WHOIS database serves many important public policy needs, such as allowing intellectual property owners to determine the identity of those conducting piracy or trademark counterfeiting operations, law enforcement officials to investigate illegal activities online, and consumers to identify the commercial entity with whom they are dealing.

It is for this reason that the Department and ICANN agreed to two provisions regarding WHOIS in the current MOU—the implementation of a centralized complaint process and an annual WHOIS update requirement for accredited registrars. ICANN will report to the Department on their progress in this regard annually, starting, respectively, in March and November, 2004.

Moreover, I believe that ICANN's management understands the need for accurate and publicly available WHOIS data, and have been encouraged by recent developments within the ICANN community. In addition to the implementation of a centralized complaint process and an annual WHOIS update requirement for accredited registrars, the President of ICANN has established a "President's Committee on WHOIS" to ensure collaboration among all constituents with respect to WHOIS data issues and convened a WHOIS workshop at ICANN's recent meeting last month. These activities reflect a continuing commitment by ICANN to broaden understanding of WHOIS data accuracy and usage issues and to develop a responsive work program. I see these developments as concrete steps to implement measures to ensure improved accuracy of WHOIS data.

Question 3. Some people have read the MOU as if ICANN's obligations regarding WHOIS data accuracy are limited to publishing only the Internic WHOIS Data Problem Reports and the ICANN WHOIS Data Reminder Policy on an annual basis. Can you clarify that this is not the case, and that you are looking to ICANN to implement new mechanisms to improve the accuracy of WHOIS data, not just to prepare reports on these two aspects of WHOIS?

Answer. ICANN's responsibilities to improve the accuracy of WHOIS data go beyond mere reporting functions. Section II.C.10 of the MOU between the Department of Commerce and ICANN provides that ICANN shall "[c]ontinue to assess the operation of WHOIS databases and to implement measures to secure improved accuracy of WHOIS data." To this end, the Internic WHOIS Data Problem Reports and the ICANN WHOIS Data Reminder Policy Reports are only intended to be specific examples of tasks supporting the broader goal of improving WHOIS data accuracy. ICANN management and key constituencies have undertaken other initiatives in this regard. For example, ICANN's Generic Names Supporting Organization is engaged in an examination of relevant aspects of the WHOIS database with a view

towards developing recommendations to improve its accuracy. My focus will be on improving the accuracy of WHOIS data and not just report production.

Question 4. The MOU extension requires ICANN to “augment its corporate compliance program” and to “audit material contracts for compliance by all parties”. In your view, what role should contract enforcement play in such a compliance program? Will NTIA be expecting ICANN to go beyond “auditing” contracts for compliance and undertake enforcement of those contracts if it detects violations? In this regard, do you believe that the NTIA views the Registrar Accreditation Agreements signed by each registrar with ICANN as “material contracts” that are covered by this aspect of the MOU extension?

Answer. From my perspective, the MOU provisions are intended to ensure that ICANN’s management understands the critical role that contracts play in the financial and corporate stability and security of the organization. Clearly the Registrar Accreditation Agreements are key documents defining ICANN’s relationship with registrars and are critical to ensuring accurate and publicly available WHOIS data. I believe that ICANN’s new management does understand and is committed to resolving contract compliance issues, including enforcement of WHOIS provisions in the Registrar Accreditation Agreements. Following completion of the audits, I will take any necessary corrective actions.

Again, thank you for this opportunity to provide additional information on the Department’s relationship with ICANN, particularly with regard to WHOIS data. Please do not hesitate to contact me if I can be of any further assistance.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
KIRK K. VAN TINE

Surface

Question 1. As you know, the Administration has announced its intention to fulfill the cross-border traffic requirements of NAFTA and will open the Border by the end of the year. What is the Department doing to prepare for the anticipated opening of the border? Will the Administration submit a proposal to Congress to authorize additional funding for border-related activities or seek other related authority?

Answer. I am aware that the Federal Motor Carrier Safety Administration has prepared a comprehensive plan to ensure that the NAFTA cross-border provisions are implemented safely and on time. The plan sets forth specific screening and monitoring procedures to ensure that Mexican vehicles and drivers comply with Federal Motor Carrier Safety Regulations when they operate in the U.S. The Administration has sought a significant increase in resources for FY2002 activities to prepare for the safe entry of cross-border commercial traffic.

Some of the major program strategies, activities, and milestones planned or undertaken to prepare for the opening of the Southern border to commercial traffic follow:

1. *Rulemaking.* On May 3, 2001, DOT proposed regulations governing the application process for Mexican-domiciled carriers that wish to operate in the U.S. and the process by which DOT will review the safety records of carriers during the first 18 months of their U.S. operations. The new requirements will ensure that carriers understand and are able to comply with U.S. requirements. Final regulations will be published by November 2001.
2. *Resources.* To support comprehensive State and Federal safety enforcement activities at the Southern border, the Department requested \$88.2 million in additional funds in its FY 2002 budget. The request includes \$13.9 million to hire 85 additional Federal staff to perform safety inspections and conduct safety audits of Mexican carriers. The Department also requested \$54 million to provide the Federal share for the construction and improvement of State commercial vehicle inspection facilities. Currently 23 border crossings with truck traffic do not have permanent inspection facilities. In addition, the Department requested \$2.3 million for immediate construction of areas to park commercial vehicles placed out-of-service for safety violations. The Department is also proposing that an additional \$18 million be made available to support the staffing of State facilities and increase State motor carrier border inspection activities. All-Federal enforcement personnel will be hired and trained by December 2001.
3. *Education and Outreach.* The FMCSA, in concert with the border States, will be conducting a series of safety compliance seminars to educate Mexican carriers and drivers on compliance with Federal and State regulations. The seminars will include a detailed explanation of new application requirements. These seminars will supplement ongoing efforts to translate and distribute edu-

cational materials to Mexican carriers and drivers. The seminars will be conducted from August to November 2001.

4. *Application Processing Procedures.* Procedures are being developed to ensure that all applications are evaluated thoroughly, accurately, and consistently, and that only qualified carriers are approved to operate. Procedures will be developed by September 2001. An application-processing center will also be established by September 2001.
5. *Safety Audit Procedures.* To ensure Mexican carriers operate safely, the FMCSA rulemaking requires that an audit of each carrier's safety performance be conducted. Within 18 months of receiving authority, all Mexican carriers must submit to a safety audit by providing records to a Federal safety investigator and participating in a thorough review of their operating procedures. Procedures for conducting the review will be in place by August 2001.
6. *Safety Databases.* The FMCSA will focus on improving the safety information systems available to Federal and State enforcement officials in order to verify application information directly with Mexican transportation officials, automate the review of applications, provide real time safety performance and other data to Federal and State inspectors and effectively monitor the safety performance of Mexican motor carriers operating in the United States. All inspectors will have access to available U.S. and Mexican driver licensing, carrier, and other safety databases by January 1, 2002.
7. *NAFTA Coordination.* The Department of Transportation will continue to work with Mexico to increase regulatory compatibility between our countries, establish cooperative agreements on the exchange of safety information, and provide technical assistance to build compatible compliance and enforcement programs in Mexico. The adoption and implementation of comparable programs in Mexico will provide greater assurance that vehicles entering the U.S. are already in compliance with safety standards.

Question 2. The astronomical costs of transportation projects should be a top concern to the Department. The cost overruns associated with the Boston Central Artery Tunnel Project have risen to over \$14 billion, and those costs will likely continue to rise before the project is completed. The Big Dig project must serve as an example for all of us on the critical importance of Federal oversight of federally funded transportation projects.

In addition to the Big Dig, the DOT is overseeing 41 other mega-projects. What actions will you take, to ensure greater Federal oversight on all federally-funded transportation projects—from airports to shipyards to highway projects?

Answer. I believe it is critical that the Department be a careful steward of Federal funds. Recipients of DOT funds and DOT internal managers must be held accountable for meeting cost and schedule goals. Since projects will not always proceed as planned, the Department should have early warning of problems with these large projects and should play an active role in developing solutions for those problems.

I understand that the Department created a Task Force to strengthen the oversight process and that several recommendations have been developed regarding improvements in the quality of the oversight process and selection of the managers who perform the oversight. If confirmed, I would expect to work with other members of Secretary Mineta's management team to ensure that DOT oversight is strengthened.

Several of the operating administrations within DOT have processes in place to oversee additional infrastructure projects that are not categorized as mega-projects. Strengthening the process for mega-projects will also serve as a model for strengthening the oversight of these smaller projects.

Administrative

Question 3. Over the last several years, it has become apparent that it is difficult, at best, to get reports and regulations cleared for release by DOT. Reports to Congress are regularly late and regulations are often held up for months as they make their way through the various agencies within DOT. Apparently even DOT agencies that have no role in the development, oversight, or enforcement of regulations are routinely required to review and sign off on regulations and reports before clearance.

(a) What action would you take to improve interagency communication and cooperation within DOT and streamline the review process for regulations and reports?

(b) What will you do to help ensure that reports to Congress are completed and submitted in a timely manner?

Answer. Secretary Mineta has committed the Department to moving as expeditiously as possible in rulemakings, consistent with its obligation to ensure that DOT agencies comply with all statutory requirements for rulemaking. As General Counsel, I would play a significant role in accomplishing this management objective. On the recommendation of the DOT Inspector General, the Department has instituted a new tracking system for regulations. That system became operational on May 1. It is capable of generating a basic set of needed reports, and the Department intends to expand its capabilities over the coming months.

Secretary Mineta's frustration with delinquent reports from the Department while serving as a Member of Congress clearly demonstrated to him the need for accurate, timely information as a key component for decision-making by Congress. Additionally, the Deputy Secretary has made timely regulatory action by the Department and its modes a very high priority, in line with recent recommendations of the Inspector General. The DOT Inspector General (IG) studied delay in DOT rulemaking (report issued July 20, 2000), and its recommendations form the basis for improved interagency communication and cooperation. The IG found areas where there were clear opportunities for improving efficiency and effectiveness and made several recommendations, all of which the Department has implemented or is implementing. If confirmed as General Counsel, I commit to make a sustained effort in this area one of my highest priorities.

It is my understanding that the various administrations within DOT are not routinely asked to review the rulemaking actions of other administrations within DOT unless the rule making could directly affect programs within their immediate jurisdiction. For example, FRA may be asked to review an FMCSA rulemaking on railroad crossings, and NHTSA may review an FAA rulemaking on child seats. In addition, it is my understanding that the Office of the Secretary now limits the review of proposed regulations and reports only to those offices within the Department that could be affected. In coordinating the regulatory process for all the modes, I would attempt to ensure that the process works efficiently, and that regulations are developed and cleared in a timely manner.

Question 4. I trust that you clearly understand the difference between statutory and report language. What steps will you take at the Department to ensure that the modal administrations treat report language as it is intended, an expression of Congressional interest, rather than having it be treated as a Congressional mandate?

Answer. I can assure you that I clearly understand the difference between statutory and report language, particularly when it comes to the naming of specific projects in report language. In such instances, only statutory language is law; report language is not law but simply an expression of Congressional interest. If confirmed, I will be sure that the Chief Counsel offices in the modal administrations understand this as well.

Maritime

Question 5. The President has proposed as part of the Administration's FY 2002 budget to zero out funding for Title XI maritime loan guarantee program. Private maritime interests who support the program recently published a report which argues that the program has been a net revenue raiser for the Federal Government? I am concerned the findings in the report have not been subjected to any outside independent analysis. If confirmed, what will you do in order to insure that such reports, which clearly counter the Department's position, are responded to fully and in a timely manner?

Answer. If confirmed, I will attempt to ensure that, when the Department is requested to evaluate a private report, it will perform an objective, independent, and balanced evaluation, and that the Department's analysis will be completed in a timely manner. My understanding is that an evaluation of the report mentioned is underway at this time in the Office of the Assistant Secretary for Budget and Programs.

Aviation

Question 6. The FAA recently published several options for managing excessive demand at LaGuardia airport. Two of the options were developed by the Port Authority of New York and New Jersey, which operates the airport. Those options involved market-based solutions wherein the Port Authority would charge congestion fees or hold an auction for take off and landing "reservations." I believe that any attempt to manage demand at LaGuardia must be done under the authority of the Federal Government because local authorities are legal preempted from imposing such solutions. Do you agree that airports do not, under Federal law, have authority

to establish their own remedies, such as congestion fees, for managing demand for air services?

Answer. The extent of an airport proprietor's powers to set fees to manage demand for air services raises complex legal issues as well as difficult issues with regard to our international aviation obligations. The FAA has the statutory authority to regulate navigable airspace and to assure efficient air traffic management. 49 U.S.C. 40103. An airport proprietor has the right to impose fees, terms and conditions on operators at its airport that are reasonable, nonarbitrary, nondiscriminatory, intended to advance a local interest, and do not impose an undue burden on interstate commerce. 49 U.S.C. 41 713(b). It is possible that a properly structured peak pricing program whose objective is to align the number of aircraft operations with airport capacity could be reasonable and not unjustly discriminatory under 49 U.S.C. 471 07(a)(1) and 47129 as well as under the U.S. international air services obligations and the International Civil Aviation Organization's policies.

However, the Department has the legal authority and obligation to review and carefully consider such programs, and I would ensure that the Department exercises that authority with respect to any plan. As stated in its June 12 *Federal Register* notice on LaGuardia options,

[The FAA does not propose nor endorse the Port Authority's options at this time. Federal laws, regulations, and U.S. international obligations presently in place may, in fact, prevent PANYNJ from imposing these proposals. In this notice we seek suggestions on effective, comprehensive solutions that represent the best public policy for controlling congestion and allocating operating rights at LGA, and we will consider pertinent legal issues in any policy options ultimately put forward for adoption. 66 FR 31 736.]

I understand that, at present, FAA is working with the Port Authority in seeking solutions to the congestion at LaGuardia; the Port Authority has not acted to impose congestion pricing or other market-based options on its own. The FAA's current effort is to attempt to identify those options that represent the best public policy solutions for controlling congestion at LaGuardia, and then address whether they might be implemented in accordance with existing legal and international requirements or whether changes might be advisable. I would ensure that I am kept informed as this subject develops, and that the Department's actions are based on sound legal analysis.

Question 7. As you may know, the bilateral air services agreement between the United States and United Kingdom, known as Bermuda 2, restricts competition and is heavily slanted in favor of British air carriers. The U.S. has tried unsuccessfully for many years to liberalize the relationship. In recent weeks, there has been some talk that negotiations may be back on track as American Airlines and British Airways may make another attempt to obtain antitrust immunity for its international alliance.

(a) What is your position with regard to the U.S./U.K. bilateral, and what will you do to ensure that the United States is not put at a disadvantage with respect to access at Heathrow?

Answer. I understand that replacing the restrictive U.S.-U.K. aviation agreement with an "Open-Skies" agreement is a U.S. aviation priority. DOT met informally with the British on June 26 and 27 to discuss a possible resumption of talks, and it was agreed that the parties would not fix dates at this point, but would be flexible and prepared to meet as and when circumstances develop further. Meanwhile, DOT continues to concentrate its efforts on partners that are ready for liberalization.

I recognize the importance to U.S. carriers of access to Heathrow. I also recognize that Heathrow is a highly congested airport and that it is critical for the slot allocation system to continue to be transparent and non discriminatory. In a liberalized environment, the ability of U.S. carriers to establish a competitively effective presence at Heathrow will be a key consideration if British Airways seeks antitrust immunity.

(b) What are the chances that the U.S. will be able to get a more liberalized agreement, or even "open skies," with regard to the British?

Answer. Although I do not at present have access to full information on this topic, it appears unclear whether the U.K. government is ready to engage in serious talks leading to open skies.

(c) What is your position on changing the 25-percent limitation on foreign investment in U.S. airlines?

Answer. The current 25 percent limit on foreign voting interest in U.S. air carriers is of course a part of U.S. aviation law, so any possible change would entail close consultation between the Administration and interested members of Congress.

I am aware that there is a divergence of opinion on this issue. Proponents cite the existing limit as an obstacle to further liberalizing U.S. carriers' access to foreign markets, while others raise concerns about possible impact on our defense posture and other adverse effects. If confirmed, I would form an opinion on this important question only after I have had an opportunity to make a thorough study of all the relevant issues, in consultation with governmental and private-sector stakeholders.

(d) What are your views on cabotage, and do you believe U.S. air carriers would be at an advantage or disadvantage if the Congress changed the cabotage laws?

Answer. This is a fundamental issue for both domestic and foreign aviation policy, as well as for the transportation parties concerned. I am familiar with the divergence of views in this area. Globalization of the airline industry, the growing number of carrier alliances, and consolidation concerns, for different reasons, have all spurred calls to reevaluate constraints that limit the markets that airlines can enter.

Modifying or removing the cabotage prohibition could result in new sources of competition for U.S. aviation consumers and if adopted globally, contribute to a more open international aviation regime on a worldwide basis. However, there are also important competing factors, such as our defense posture, that argue against any change in the cabotage prohibition.

I believe that U.S. airlines have shown both domestically and internationally that they are effective, adaptable competitors. I would expect such U.S. carrier competition to continue if the cabotage laws were changed. However, the specifics of any "advantage or disadvantage" would also depend on how Congress changed the cabotage laws and the international response to the change.

Question 8. In its January 2001 report on airline competition, the Department of Transportation discussed taking aggressive action to open up airport facilities to make possible new and increased airlines services, and thereby promote competition.

(a) What actions to open airport facilities do you believe DOT could take in order to promote competition?

Answer. Beginning with Fiscal Year 2001, certain large-and medium-hub airports must submit competition plans in order for the FAA to approve the collection of a new Passenger Facility Charge (PFC) or for a grant to be issued under the Airport Improvement Program (AIP). The underlying purpose of this statutory requirement—contained in AIR 21 and based on our report "Airport Business Practices and their Impact on Airline Competition"—is for those airports that are dominated by one or two carriers to demonstrate how they will provide for new-entrant access and expansion of incumbent air carriers.

To date, DOT has reviewed and provided extensive comments on 38 competition plans, resulting in airport officials adopting business practices that are more "entry friendly." DOT has met with airports that have deficient plans to provide them with detailed comments as to what actions they need to take to meet their statutory obligations regarding the content of the competition plan. Finally, DOT developed an "implementation audit plan," required by AIR 21, in light of the possible need to take more stringent legal/regulatory actions against those airports not meeting their legal obligations.

(b) In your view, is the perimeter rule at Reagan, National Airport an anti-competitive barrier to competition?

Answer. While a principal tenet of airline deregulation is open competition and the elimination of economic restrictions such as the perimeter rule, the Department's position has been that modification to the perimeter rule at Reagan National Airport should be handled by Congress and the local authorities. I agree with that position.

Question 9. For each of the past four years, DOT has extended the current Computer Reservation System (CRS) rules for a year without addressing the concerns that it raised about the rules' applicability to Internet sales and other issues.

(a) Do you believe the CRS rules should apply to Internet distribution of airline tickets?

Answer. Because the Department recognizes the importance of the question of whether the CRS rules should be applied to the Internet sale of airline tickets, the Department asked the parties in its pending CRS rulemaking to comment on this issue. I understand that many parties submitted comments on this issue which disagree on whether regulation is necessary. I have not yet had an opportunity to review those comments but would carefully do so before I would advise the Secretary on the rulemaking issues.

(b) When will DOT act to finalize changes to the CRS rules?

Answer. The Secretary fully recognizes the importance of completing the CRS rulemaking. He has instructed the staff to move forward on the rulemaking and develop a rulemaking proposal that can be forwarded to OMB. If confirmed, I intend to ensure that the staff promptly carries out the Secretary's directions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
KIRK K. VAN TINE

Stabilization Act Compensation Payments

Question 1. I have been informed that the DOT has provided different awards of compensation to comparably situated air carriers. Some have suggested that there may be serious flaws in the way the compensation payments were administered. At different times, I received complaints about the management of the program.

- Was any thought given to the need for third party resolution of disputes, or at least their assignment to an Administrative Law Judge.
- Do you have any thoughts as to why there have been what seem to be a lot of complaints about the handling of this program?

Answer. The Department's implementation of the compensation provisions of the Air Transportation Safety and System Stabilization Act has been based on the language of the statute. In Section 103 of the Act, Congress specified that the amount of a carrier's compensation was to be the lesser of the amount determined under a market share formula, or the amount of the carrier's actual losses due to the terrorist attacks. In that same section, Congress also specified that the amount paid could not exceed the amount that the carrier could demonstrate, to the satisfaction of the President, that it lost due to those attacks.

Under Section 103, if two "comparably situated" carriers both demonstrated actual losses greater than their market share formula amount, then both would be entitled to their formula amount. For carriers with comparable market shares, the formula would result in comparable compensation for both. However, if one or both carriers demonstrated losses less than the formula amount, the amount of compensation payable to each might be different, because the carriers may have incurred different actual losses as a result of differing business structures, different contractual arrangements with customers, or other possible factual differences.

On September 17, 2003, the General Accounting Office issued a report on the Department's post-September 11 aviation assistance programs. That report included a review of the Department's processes and methodology in implementing the compensation program. The GAO report contained no adverse findings or recommendations, and indicated that DOT's payment methodology conformed to the statutory requirements. A copy of that report, GAO-03-1156R, is attached.

As described in the report, the Department's "disaster relief program was administered by a team of DOT accountants, economists, and aviation analysts within the Office of the Secretary with support from the Office of the General Counsel and Office of the Inspector General. DOT designed and implemented a structured claim review process to help ensure that only September 11 losses were compensated. . . . After applications were reviewed, carriers received the lesser of allowable actual losses related to the terrorist attacks or the market share formula amount as specified in the Act." GAO Report at 12 (footnote omitted).

In its review, GAO focused on the claims of 14 major carriers, including two all cargo carriers, United Parcel Service and Federal Express. GAO Report at 19. However, as the report notes, DOT received over 450 applications for compensation under the Act. Almost all of those claims were resolved to the mutual satisfaction of the carriers and the Department. Presently, only three carriers are challenging the Department's procedures in court.

In establishing the procedures for processing claims, the Department did give consideration to the issue of how to resolve disputes that might arise. Because of the large number of claims that were anticipated, and because of the urgent need on the part of the carriers to receive payment as quickly as possible, it was determined that the best course of action was to process the claims as expeditiously as possible under the Department's regulations, to attempt to work out any disputed issues with carriers consensually, and to ensure that carriers had access to the normal legal process for resolving any disputes that remained. The Department believes that that process was largely successful, and has resulted in final decisions and payments more quickly than referring disputed claims to Administrative Law Judges or other forms of dispute resolution, which would insert additional intermediate steps in the overall resolution of the issues. The Department believes that the added

time and expense of such intermediate proceedings would have created hardships for affected carriers by further delaying final resolution of their claims.

In the first two weeks after the statute was enacted, the Department disbursed approximately \$2.3 billion in compensation, and at the time, that prompt action was credited in the industry and the press with saving many carriers from bankruptcy. Many of the issues that subsequently arose were the result of misunderstandings as to the information necessary to process claims or the meaning of the statutory language, and were resolved through discussions between the carriers and the Department. I am aware that Congress has received complaints from particular carriers who dispute specific portions of the Department's regulations. If confirmed, I would encourage the Department to explore the possibility of further discussions with those carriers to see whether any of those outstanding disputes can be resolved amicably.

Domestic Policy

Question 2. Congress deregulated the airline industry in 1978, and sunset the Civil Aeronautics Board. Access to airports prior to 9–11, was a major concern of new entrant carriers. I pushed to open up dominant hubs, including requiring airports to file competition plans with DOT. I understand the plans were suspended for a time after 9–11.

- Is the Department again requiring airports to file these plans?
- How would you use this type of information to aid in gaining access for carriers that are not able to obtain gates at dominant hubs?

Answer. In an October 1, 2001 letter, the Department temporarily deferred the filing of competition plans or competition plan updates to March 1, 2002, and announced that it would make airport improvement program (AIP) and passenger facility charge (PFC) funding decisions before May 1, 2002, without regard to the status of the competition plan updates. The Department took this action primarily because of the immediate need for airports to implement additional security measures after the September 11, 2001 terrorist attacks. Following the deferral, all covered airports filed plans or plan updates in Fiscal Year 2002 and in Fiscal Year 2003, in accordance with the Department's filing requirements. 49 U.S.C. §§ 40117(k), 47106(f); Program Guidance Letter (PGL) 03–01.1, Requirement for Airline Competition Plans (November 19, 2002).

A provision in the Aviation and Transportation Security Act that would have exempted covered airports from filing competition plans or updates if they used their Fiscal Year 2002 PFC or AIP grants to improve security was deemed not applicable, because the covered airports informed the Department that they did not intend to use 100 percent of such funds for security projects. Aviation and Transportation Security Act, Pub. L. No. 107–71, § 123(a), 115 Stat. 597, 630–631 (2001) (codified at 49 U.S.C. § 47106(f)(3)).

In the same Program Guidance Letter, the Department lengthened the time period for filing competition plan updates to 18 months from the date the Federal Aviation Administration (FAA) approves a plan filing. Program Guidance Letter 03–01.1, November 19, 2002. It is my understanding that the intent of allowing this additional time period was to enable airports to integrate suggested business practices into their procedures and to report on the results. The Department continues to monitor airport implementation of competition plans throughout this period, in accordance with the statutory responsibilities to review the plans and their implementation to ensure that each airport successfully implements its plan. 49 U.S.C. § 40117(k)(2).

I believe these plans are useful tools in helping airports analyze ways to open their facilities to new entrants and other potential competitors. I have been informed that, at each of the 38 airports that have filed competition plans and plan updates, concrete actions have resulted from the competition plan process, such as review of gate leases and subleases, monitoring gate use, appointing new entrant liaisons, developing dispute resolution processes, and developing fairer and more transparent processes for gate availability notification and gate assignment. If confirmed, I would expect the Department to continue to work with airports to ensure that meaningful competition plans are developed and implemented.

Rulemaking Procedures

Question 3. Under your tenure as General Counsel, DOT issued four rules without notice and comment under the Stabilization Act. In another case, DOT was not able to testify because it was in the middle of the comment period in a rulemaking proceeding.

- What are your views on notice and comment and when is it appropriate to not use the “normal” procedures?
- When do you believe it is appropriate for DOT to testify when it is engaged in a rulemaking?

Answer. I strongly believe in the importance of providing an opportunity for notice and comment as part of the rulemaking process. Having served for two years as General Counsel of the Department, and having practiced for 23 years as a lawyer in the private sector, I believe I have a good understanding of the requirements of Section 553 of the Administrative Procedure Act (APA). In general, the APA provides for notice and an opportunity to comment before issuing final rules, with two important exceptions. First, for certain categories of rules defined in law, an advance opportunity for notice and comment is not required. Second, when the agency finds “good cause” (e.g., an emergency or other special circumstances), an advance opportunity for notice and comment is not required. The circumstances that could constitute good cause vary from case to case, and are generally outlined in case law. If the Department cannot provide advance notice and an opportunity to comment, and believes comments may provide useful information, I strongly believe the Department should provide an opportunity for comment after the rule is issued, and give serious consideration to those comments.

In response to the second part of your question, I believe it is appropriate for Congress to request and for Departmental witnesses to appear before Congressional committees whenever oversight of agency action is needed. However, the Department has at times requested that Congressional committees consider changes to the form or timing of such appearances in order to preserve the legal integrity of matters that are pending before the Department. In those instances, the Department has attempted to ensure that the potential testimony of Departmental witnesses would not violate the various legal requirements that govern the rulemaking process, and that participation in the hearing would not subject the final rule to legal challenge based on a claim of undue Congressional pressure. While it is difficult to generalize, I believe those concerns are heightened when the comment period is over, the entire rulemaking record has been closed to comments, and the Department is in the final, decision making stage of the rulemaking proceeding. In the past, after discussions with Committee staff, such situations have been resolved cooperatively, and I certainly believe the Department should continue to work with Congress in the same way when such situations arise in the future.

DHL Citizenship

Question 4. It took DOT 18 months to complete its citizenship review of DHL’s October 2000 reorganization. The DOT IG found that review inadequate, and DOT has since given the matter to an ALJ, allowing less than six months to review DHL’s June 2003 reorganization.

- Do you believe that the ALJ will have sufficient time to complete a record, adequate for you to review and for the DOT to make a decision in this complex case?

At the time DOT’s handling of the citizenship of DHL Airways was under scrutiny by the IG, DOT began an informal review of DHL’s acquisition of Airborne. However, the IG criticized the lack of transparency in DOT’s administration of these requirements.

- What role did you play as General Counsel in this matter?
- What are your thoughts on this matter and what factors will you consider as the Deputy Secretary in reviewing this matter?

Answer. I am informed that, since referring the matter to an Administrative Law Judge, the Department has issued several orders granting requests by the ALJ to extend the time for completion of the proceeding. The Department’s reasoning is set forth in its orders in the docketed proceeding. Because the proceeding is still pending before the ALJ, and because the issue described in your question has been raised as a contested matter in the case, I believe it would be inappropriate for me to comment further at this time.

Under the Department’s regulations, the Secretary has delegated authority to issue final decisions in such matters to the Assistant Secretary for Aviation and International Affairs. The role of the Office of General Counsel in such cases is to provide legal support on issues of statutory interpretation, such as the meaning of the statutory citizenship requirements, and to assist in the review of factual information provided to the Department by carriers. As General Counsel, my role was to ensure the legal sufficiency of the Department’s actions. I concluded that, under

the Department's existing regulations, the Department had complied with all applicable legal requirements. The Inspector General's report did not conclude otherwise.

Because the matter is presently pending before an Administrative Law Judge, and will be before the Department after the ALJ issues a recommended decision, it would be inappropriate to address in this response any of the issues that may be presented to the Department for final decision. However, the Department's responses to the procedural issues raised in the Inspector General's report, and my own views regarding the Inspector General's recommendations, are set forth in my response to the written questions of Senator Rockefeller, a copy of which is attached.

One of the management responsibilities of the Deputy Secretary would be to ensure that the Assistant Secretary for Aviation and International Affairs and the General Counsel complete the review of the Department's procedures in a timely manner, and to review any recommended improvements to the process before they are presented to the Secretary for approval. If confirmed, I would ensure that the important concerns raised by the Inspector General are thoroughly and sufficiently addressed

U.S.-European Union Negotiations

Question 5. Mr. Lamy has taken a tough stand with respect to negotiations with the U.S. over steel and a number of other issues. The U.S. is also negotiating with the EU over an aviation pact.

- Why should we negotiate with the EU now, given its hard line on other matters?

Issues under consideration include, apparently, cabotage and changes in the foreign ownership laws. The Department apparently has already caved to the EU on foreign ownership as it has already asked for legislation to change these long-standing laws.

- As the Deputy Secretary, and as a long time counsel involved with complex litigation, would it be your position to give away issues under negotiation in advance, or would you choose a different process to negotiate such key issues?
- Access to Europe, and particularly London's Heathrow Airport has long been a critical goal of the U.S. Do you still support an opening of Heathrow as a precondition to a deal with the EU?

Answer. In addition to the factors mentioned in your question, it is my understanding that the timing of negotiations with the E.U. is heavily influenced by the fact that the negotiations could ultimately result in substantial potential benefits to U.S. consumers, carriers, and communities. These negotiations hold the possibility of creating the world's largest open-skies area and, with it, new opportunities for economic growth.

The U.S. and E.U. are still at a preliminary stage in these discussions. Once the key issues have been identified, a negotiating strategy will be tailored that best serves U.S. goals, including enhanced access to European markets (including London Heathrow). The Administration's proposal to modify the ceiling on foreign investment to 49 percent is not a concession to the EU, but rather is motivated independently by a desire to increase the access of U.S. airlines to global capital. It is my understanding that the proposal to modify the ceiling on foreign investment does not include any change to any of the other legal requirements for citizenship, including the actual control test. If confirmed, I would ensure that the concerns raised in your question would be given serious consideration.

Bipartisan Congressional Oversight

Question 6. Recently, it was reported that the White House would no longer respond to requests from the minority, unless the majority party agreed to the request. You have stated in response to several questions posed by the Committee that you will cooperate with the Committee in providing information to us.

- Given the White House position, will you provide information to the minority, when requested and respond expeditiously?

Answer. I am not aware of the details of the issue described in the first sentence of your question. However, I have been informed that the Department has not received any instructions to change its longstanding policy of cooperation with Congressional requests from both the majority and minority. If confirmed, I would expect the Department to continue to respond expeditiously to all such requests as in the past, whether from majority or minority members.

Air Traffic Control Privatization

Question 7. It is important that Congress pass H.R. 2115, the FAA Reauthorization Conference Report, which authorizes funding for key FAA programs over the next several years. The legislation is currently being held up from final passage primarily over the issue of privatizing our Nation's air traffic control (ATC) system.

- Much of the concern in Congress over this matter comes as a result of the Administration's decision to remove the "inherently governmental" distinction from the ATC workforce. What role did you play in this decision?
- Do you feel that the safety of the ATC system could be impacted if portions are outsourced?

Answer. On December 18, 2002, Secretary Mineta issued a written determination under the Federal Activities Inventory Reform Act of 1998 ("FAIR" Act), 31 U.S.C. § 501, finding that the separation and control of air traffic is not an inherently governmental function, but finding that such services, when provided at FAA's en route and larger terminal facilities, are activities that are a core capability of the FAA. Services that qualify as core capabilities are not subject to being contracted out to the private sector. As General Counsel of the Department, my role regarding this issue was to ensure that the Department's decisions conformed to the requirements of the applicable law. I concluded that the Department's actions were legally correct in all respects.

The Administration has repeatedly stated that it has no immediate plans to contract out air traffic services at existing federally staffed air traffic control towers. This position was reaffirmed by FAA Administrator Blakey as recently as September 24, 2003, in a hearing before the House Committee on Transportation and Infrastructure, Subcommittee on Aviation, in response to questions.

I have reviewed the Inspector General's Report, dated September 4, 2003, entitled "Safety, Cost and Operational Metrics of the Federal Aviation Administration's Visual Flight Rule Towers," and in particular the portion of the report entitled "Safety" at pages 6–7. I have no basis on which to disagree with the conclusions set forth in the report. I have been assured by the FAA that it closely oversees the existing contract tower program. It is also my understanding that contract towers are staffed by qualified controllers who hold the same certification as FAA's federally employed controllers. If confirmed, I would expect the FAA to continue to assess and monitor the safety impacts of its actions in this area.

UNITED STATES GENERAL ACCOUNTING OFFICE
Washington, DC, September 17, 2003

Congressional Requesters

Subject: *Aviation Assistance: Information on Payments Made Under the Disaster Relief and Insurance Reimbursement Programs*

As a result of the September 11, 2001, terrorist attacks on the United States, the airline industry incurred significant losses resulting from the temporary shutdown of the Nation's airspace and passengers' apprehensions about flying following the attacks. The Air Transportation Safety and System Stabilization Act¹ (the Act) provided, among other things, \$5 billion in emergency assistance to compensate air carriers for their direct and incremental losses stemming from the attacks. The Act also authorized the Department of Transportation (DOT) to reimburse air carriers for increases in their insurance premiums.

On September 28, 2001, we completed and briefed you on the first phase of the work you requested, concluding that there was a reasonable basis to assume that the airlines' financial losses related to September 11 would exceed the \$5 billion made available in the Act.² Since then and pursuant to the second part of your request, we monitored DOT's progress in administering the disaster relief and insurance reimbursement programs and provided periodic status updates to your offices.

On September 3, 2003, we provided our final briefing addressing the second aspect of your request. Specifically, for the \$5 billion disaster relief program, we discussed the process DOT employed to help ensure that the payments it made were only for the direct and incremental losses stemming from the terrorist attacks. We also provided information about the losses claimed by the major air carriers and

¹Pub. L. No. 107-42, 115 Stat. 230 (2001).

²The briefing slides and a summary of our analysis were included in our October 5, 2001, correspondence to you. See GAO-02-133R *Financial Management: Assessment of the Airline Industry's Estimated Losses Arising From the Events of September 11*.

payments made by DOT to these carriers and others that applied for assistance. For the insurance reimbursement program, which was administered by the Federal Aviation Administration (FAA), we discussed the process FAA used to determine and reimburse air carriers for insurance premium increases resulting from the September 11, 2001, disaster. We also provided information on the total payments made under the program. Finally, we discussed FAA's expanded in-house aviation insurance program and the potential impact to the Federal Government. The briefing slides, which provide more detail on our analysis, are enclosed.

Results in Brief

DOT designed and implemented a structured claim review process to help ensure that the \$5 billion in disaster relief funds were used only to compensate carriers for their September 11 related losses. A team of DOT accountants, economists, and aviation analysts with support from the department's Offices of the General Counsel and the Inspector General administered the disaster relief program, reviewed carriers' loss claims, and determined carriers' allowable September 11 related losses. As specified in the Act, each carrier was compensated the lesser of allowable actual losses or the market share formula amount.³ The major air carriers claimed losses of \$5.6 billion related to the terrorist attacks. These carriers have been paid \$4.1 billion or 88 percent of the total \$4.6 billion distributed. As of August 26, 2003, DOT reported that most air carriers had received their final payments pursuant to this program, although a small number of claims remained open due to unresolved issues. All the major carriers except Federal Express have received their final payment. Federal Express has an administrative appeal and a lawsuit pending with regard to its payment.

Overall, the major carriers recovered approximately 73 percent of their claimed losses, although 8 of the 14 major carriers had all their September 11 losses compensated. The remaining 6 carriers' losses were only partially compensated because their allowable September 11 losses exceeded the amount determined by applying the market share formulae prescribed in the Act. Industry wide, 355 of the total 448 applicants receiving assistance were paid based on the formula. Because 93 carriers had actual losses less than their formula amount, DOT will not distribute the entire \$5 billion provided in the Act. DOT advised the Congress of this fact and in February 2003 the Congress rescinded \$90 million.⁴ DOT officials plan to return any remaining unused funds to the Treasury upon the completion of the program.

With regard to the insurance reimbursement program, the FAA implemented a systematic review process to determine the increases carriers experienced in their war risk insurance premiums following the terrorist attacks and to reimburse the carriers accordingly.⁵ FAA utilized insurance providers' invoices to substantiate the premiums being charged immediately before September 11 and to evidence premium increases following September 11.⁶ For each of the major air carriers, we verified FAA's reimbursement determinations by independently recalculating these amounts. In total, 183 carriers were reimbursed \$68 million for their increased insurance costs. The major carriers received \$58 million, or 85 percent, of this total.

Soon after the terrorist attacks, insurance providers generally cancelled carriers' war risk insurance coverage but then offered to reinstate the policies at a substantially higher cost and with reduced coverage limits. For the major carriers combined, the total annual cost for war risk coverage jumped from approximately \$12 million prior to the attacks to more than \$700 million immediately afterwards. This led to the Secretary of Transportation's determination that war risk insurance was not available commercially on reasonable terms and conditions and thus FAA was authorized to begin temporarily selling war risk coverage to air carriers operating domestic flights. Under current legislation, FAA may continue to provide war risk coverage through August 2004 with a possible extension through December 2004. In its 2003 Accountability Report, FAA reported that it had extended \$113 billion in coverage to 71 carriers, thereby increasing the Federal Government's risk exposure. Meanwhile, air carriers have begun to explore other options including a risk retention group to provide more affordable coverage in anticipation of FAA's offering of war risk insurance terminating in 2004.

³The formula amount is calculated by dividing the carrier's available seat miles (ASMs) or revenue ton miles (RTMs) by the universe of ASMs/RTMs (a reflection of market share) multiplied by available compensation.

⁴Public Law 108-7, sec 333, 117 Stat. 414 (2003)

⁵War risk insurance provides coverage to carriers for losses resulting from war, terrorism, or other hostile acts. These policies typically provide coverage for the aircraft and liability.

⁶The Act specified insurance increases were to be measured against the rates in effect during the period September 4-10, 2001.

Scope and Methodology

Our review primarily focused on the major air carriers. DOT defines a major carrier as an air carrier whose annual operating revenue exceeds \$1 billion. To achieve our objectives we performed various procedures, which are described in detail in Appendix I of the enclosed slides. We did not audit the major air carriers or the underlying records supporting the claims for disaster relief payments. Also, we did not assess the reasonableness of the pre- or post-September 11 premiums charged to carriers for war risk insurance coverage. We conducted our review from September 2001 through August 2003 in accordance with generally accepted government auditing standards.

Agency Comments

We requested comments on a draft of these briefing slides from the Secretary of Transportation or his designee. On August 26, 2003, DOT provided us with oral comments expressing the department's general agreement with the facts presented. DOT provided some technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from its date. At that time, we will send copies to the Secretary of Transportation, the Administrator, Federal Aviation Administration, and interested congressional committees. We will also provide copies to others on request. The report will also be available at no charge on the GAO website at <http://www.gao.gov>.

If you have any questions about this report, please contact me at (202) 512-9508, or Phillip McIntyre, Assistant Director, at (202) 512-4373. You may also reach us by e-mail at calboml@gao.gov or mcintyrep@gao.gov. Other key contributors to this assignment were Jeffrey Jacobson, Ruth Walk, and Doris Yanger.

LINDA CALBOM,

Director, Financial Management and Assurance.

Enclosure

List of Requesters

The Honorable Robert C. Byrd
Ranking Minority Member
Committee on Appropriations
United States Senate

The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable John D. Rockefeller IV
Ranking Minority Member
Subcommittee on Aviation
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Ron Wyden
United States Senate

The Honorable Lloyd Doggett
House of Representatives



Air Transportation Safety and System Stabilization Act: Aviation Assistance Programs

Information on Payments Made Under
the Disaster Relief and Insurance Reimbursement Programs

Briefing for Congressional Requesters
September 3, 2003



-
- Introduction
 - Objectives
 - Results in Brief
 - Background
 - Scope and Methodology
 - Disaster Relief – DOT Claim Review Process
 - Disaster Relief – Payments
 - Insurance Reimbursement – FAA's Claim Review Process
 - Insurance Reimbursement – Premium Increases and Payments
 - FAA's Aviation Insurance Program
 - Appendix I – Detailed Scope and Methodology
-



- In the aftermath of the September 11 terrorist attacks, air passenger traffic sharply declined. This, coupled with the already slumping economy and reduced business travel, led aviation industry officials to predict significant financial losses for calendar year 2001.
- On September 22, 2001, the President signed into law the Air Transportation Safety and System Stabilization Act (act) which provided, among other things,
 1. \$5 billion in disaster relief funds, and
 2. authority to reimburse air carriers for increases in their insurance premiums.



- At your request in September 2001, we performed a preliminary, high-level assessment of the airlines' projected losses between September 11 and December 31, 2001, and reported that as an industry, there was a reasonable basis to assume that those losses related to the attack would likely exceed the \$5 billion made available under the act.¹
- We have been monitoring the Department of Transportation's (DOT) administration of the \$5 billion disaster relief program and the disbursement of the insurance reimbursements.
- Now that DOT has substantially completed its claim evaluation and payment processes under the disaster relief program and finished making payments under the insurance reimbursement program, we are providing information about DOT's process and payments made.

¹ See U.S. General Accounting Office, *Financial Management: Assessment of the Airline Industry's Estimated Losses Arising From the Events of September 11*, GAO-02-133R (Washington, DC: October 5, 2001). 4



Objectives

- Specifically, for the disaster relief program, we are discussing:
 1. the process DOT used to help ensure that the payments it made were only for the direct and incremental losses stemming from the September 11 terrorist attacks, and
 2. the major airlines' reported September 11 related losses and the compensation payments they received for those losses.
- For the insurance reimbursement program, we are discussing:
 1. the process employed by the Federal Aviation Administration (FAA) to determine how much of any insurance premium increases occurred as a result of September 11 and that the reimbursement payments made properly reflected those increases, and
 2. the amount of reimbursements made for increases in insurance premiums.
- We are also providing overall summary payment information for both the disaster relief and insurance reimbursement programs.

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Objectives

- In addition, we are providing information about the current state of aviation insurance and the potential impact to the federal government.
- We provided DOT our views on its administration of the payment processes as they occurred and are not making any recommendations as the programs are substantially completed.

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Results in Brief

Disaster Relief Program

- The disaster relief program was administered by a team of DOT accountants, economists, and aviation analysts with support from the offices of the General Counsel and the Inspector General. DOT designed and implemented a structured claim review process to help ensure that only September 11 losses were compensated.
- The process was documented in publicly available program rules that provided guidance to the air carriers applying for assistance.
- DOT determined an air carrier's allowable actual losses by analyzing its applications and supporting documentation and, where necessary, consulting with the air carrier. Certain losses, such as impairment losses, were generally disallowed.
- After applications were reviewed, carriers received the lesser of allowable actual losses related to the terrorist attacks or the market share formula amount² as specified in the act.
- On average, it took over 3 1/2 months longer to determine the compensation amounts for carriers that were paid on the basis of allowable actual losses.

² The formula amount is calculated by dividing the carrier's available seat miles (ASMs) or revenue ton miles (RTMs) by the universe of ASMs/RTMs (a reflection of market share) multiplied by available compensation.



Results in Brief

Disaster Relief Program

- Final payments for most carriers were issued by December 31, 2002. As of August 26, 2003, a small number of cases remained open due to unresolved issues.
- The 14 major air carriers claimed \$5.6 billion in losses related to September 11. As of July 22, 2003, \$4.1 billion in disaster relief funds had been distributed to the major air carriers.
- \$363 million of the disaster relief funds were not distributed because 93 carriers had actual allowable losses that were less than the formula amount. Of these funds, \$90 million was rescinded by P.L. 108-7 and at the conclusion of the program DOT plans to return any unused funds to the Department of the Treasury.
- Determining actual losses added complexity and lengthened the payment process. Ultimately, many carriers were compensated less than their September 11 losses while some carriers recovered all of their September 11 losses.



Insurance Reimbursement Program

- The FAA implemented a systematic review process including the review of invoices from the air carriers' insurance providers to (1) determine rates in effect during September 4-10, 2001, and (2) evidence actual increases.
- FAA reimbursed carriers for 30 days of increased premiums using funds from the Aviation Insurance Revolving Fund.
- Estimated annual war risk insurance premiums³ for the 14 major air carriers increased from approximately \$12 million to approximately \$719 million. Due to this increase, carriers are considering forming a risk retention group to obtain more affordable coverage.
- FAA reimbursed 183 carriers \$68 million.
- In response to the lack of availability of third-party liability insurance, FAA expanded its in-house aviation insurance program from a standby basis to as much as \$113 billion in coverage which increased the government's risk exposure.
- The current balance in the Aviation Revolving Fund from which claims are paid may not be sufficient to pay a carrier's claim in a timely manner.

³ This estimate is calculated based on invoices air carriers received from commercial insurance carriers immediately after September 11.



- The act was intended to compensate air carriers for losses incurred as a result of the terrorist attacks. Title I created the Disaster Relief program and Title II authorized the Insurance Reimbursement program.
- Title I provided for the payment of \$5 billion to air carriers for direct losses incurred as a result of the ground stop order issued on September 11th and incremental losses incurred by air carriers through December 31, 2001.
 - Title I allocated
 - \$4.5 billion to passenger-only or combined passenger and cargo carriers (passenger carriers) and
 - \$.5 billion to cargo-only carriers (cargo carriers).



- Further, Title I directed that the maximum amount of compensation paid to each carrier may not exceed the lesser of
 - its allocated share of the passenger carrier or cargo carrier distributable amounts, \$4.5 billion and \$.5 billion, respectively (referred to in this briefing as the “formula amount”), or
 - the actual direct and incremental losses incurred by the carrier as a result of the September 11 terrorist attacks (referred to in this briefing as “allowable actual losses”⁴) as demonstrated to the satisfaction of the President.
- The Aviation and Transportation Security Act (Public Law 107-71) signed November 19, 2001, amended the act by providing that a portion of the \$4.5 billion passenger carrier disaster relief funds could be set aside for smaller air carriers such as air ambulances and tour operators.

⁴ Allowable actual losses were generally determined based on the difference between pre-September 11 forecasts and actual financial results for the compensable period.



- Title II of the act gave the Secretary of Transportation the authority⁵ to reimburse air carriers for the increase in the cost of insurance, with respect to a premium for coverage ending before October 1, 2002.
- Cost increases were to be measured against the rates in effect September 4–10, 2001.
- Following the attacks, war risk insurance⁶ was cancelled by air carrier insurers and reinstated with reduced coverage at higher prices.

⁵ The Secretary delegated this authority to the FAA Administrator.

⁶ War risk insurance provides coverage for flights to cover losses resulting from war, terrorism, or other hostile acts. Both hull and liability insurance coverage are provided.



- The higher premium included surcharges⁷ that were imposed for both:
 - hull war risk which covers loss of or damage to the aircraft, and
 - liability war risk which covers death or injury to passengers and third parties.
- Prior to September 11, a separate premium was charged only for hull war risk and there were no surcharges.
- The post-September 11 surcharges for hull and third-party liability war risk were:
 1. Hull war risk surcharge -- \$.05 per \$100 of the average fleet value.
 2. Liability war risk surcharge -- \$1.25 per passenger per enplanement.

⁷ Currently, insurance providers have incorporated the surcharges into the overall hull and comprehensive war risk premiums and are no longer charging amounts separately.



- We focused our work on the major air carriers.
- Major air carriers are air carriers whose annual operating revenue exceeds \$1 billion.
- The 14 major air carriers as of September 11, 2001, were:

➢ Alaska Airlines ⁸	➢ America West Airlines
➢ American Airlines	➢ American Eagle Airlines
➢ American Trans Air	➢ Continental Airlines
➢ Delta Air Lines	➢ Federal Express ⁹
➢ Northwest Airlines ⁸	➢ Southwest Airlines
➢ Trans World Airlines ¹⁰	➢ United Airlines
➢ United Parcel Service ⁹	➢ US Airways
- See appendix I for additional discussion of our scope as well as the methodology used for this review.

⁸ Alaska Airlines and Northwest Airlines submitted separate applications for disaster relief compensation for their cargo operations. The annual operating revenue for these cargo operations did not exceed \$1 billion and therefore we only reviewed the claims related to their passenger operations in our work.

⁹ Federal Express and United Parcel Service are cargo carriers.

¹⁰ As of the quarter ended March 31, 2002, DOT no longer classifies TWA as a major air carrier.



- The disaster relief program was administered by a team of DOT accountants, economists, and aviation analysts within the Office of the Secretary with support from the Office of the General Counsel and Office of the Inspector General.
- This review team designed and implemented a structured claim review process to help ensure that only September 11 losses were compensated.
- A team of reviewers analyzed each of the major air carriers' final applications.
- The process was documented in publicly available program rules that provided instructions, forms, deadlines, and guidance to air carriers applying for assistance.

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- DOT structured the program into three payment rounds.
 - Because the amount of losses submitted by the air carriers in round 1 were based upon early estimates, air carriers received 50 percent of estimated compensation amounts in this round.
 - In round 2 (where losses were based upon estimated and actual financial data), air carriers received additional compensation to equal a cumulative total of 85 percent.
 - In round 3, where losses were based upon actual financial data for the period September 11 through December 31, 2001, and were approved by DOT, most carriers received additional compensation to equal a cumulative total of 100 percent of allowable compensation.
 - As discussed later, final payments have not yet been made to several carriers, primarily those smaller carriers qualifying for the set-aside program.
- DOT required agreed-upon procedures to be performed by independent public accountants on the information submitted in the round 3 applications, which sought to verify that the amounts submitted by the air carriers either agreed with or were reconciled to the carriers' financial systems and other supporting documentation.¹¹

¹¹ Small air carriers were required to submit simplified agreed-upon procedures.

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Figure 1: Losses Claimed by the Major Air Carriers under the Disaster Relief Program

	Losses claimed by the major air carriers
Passenger carriers	\$5,343,782,846
Cargo carriers	\$244,799,999
Total	\$5,588,582,845

Source: Major air carriers' 3rd round applications.

Note: These amounts were the losses claimed on the major air carriers' 3rd round applications. These losses generally exclude items such as impairment losses¹² but may not be adjusted in some cases for other losses DOT would have disallowed.

- In round 3, the DOT review team analyzed the applications and supporting documentation to determine the air carriers' allowable actual losses. DOT consulted with the carrier by phone and e-mail to clarify issues and make payment determination decisions.

¹² Impairment losses, which can also be referred to as devaluation, are the amounts by which the fair (market) value falls below the book value of an asset, such as a carrier's aircraft. 17



- Such decisions regarded the inclusion or exclusion of certain expense items based upon the item's relation to the terrorist attacks. For example, DOT excluded approximately \$2 billion in impairment losses because, in its judgment, air carriers could not show that impairment losses were fully attributable to the terrorist attacks nor fully realized in the compensation period.
- While the review team's payment decisions were not always fully documented in the air carrier payment files, the review team was able in all cases to explain to us the basis for their payment decisions affecting the major air carriers.
- As part of its efforts to maintain consistency in payment determination decisions, the review team in some cases held discussions with and/or requested additional information from air carriers which were taken into consideration in settling and closing claims.



- Although a laborious task as described above, once the review team determined the air carrier's allowable actual losses related to the September 11 terrorist attacks, DOT issued, in accordance with the act, compensation equal to the lesser of allowable actual losses or the carrier's formula amount.



- The length of time it took to issue final compensation payments to the air carriers varied.
- After the round 3 applications were received from the major air carriers, it took an average of
 - 16 days (with a maximum of 26 days) to determine the compensation for the air carriers paid on the basis of the formula, and
 - 128 days (with a maximum of 248 days) to determine the compensation for the air carriers paid on the basis of allowable actual losses.
- On average, it took over 3 1/2 months longer to determine the compensation amounts for carriers that were paid on the basis of allowable actual losses.
- Final compensation for most carriers (74 percent) was issued by December 31, 2002. However, as of August 26, 2003, a small number of cases were open due to remaining unresolved issues.



- A few carriers have sued DOT challenging the department's rule making. As of July 22, 2003, Federal Express (FedEx) was the only major air carrier suing DOT.
 - FedEx received approximately \$101 million¹³ in compensation in round 1, which approximated 50 percent of the losses FedEx originally estimated.
 - In round 3, DOT determined FedEx's actual losses to be only approximately \$69 million after reviewing its application. FedEx has administratively appealed this determination.
 - DOT has sought repayment of approximately \$32 million¹³ from FedEx.
 - FedEx is claiming approximately \$119 million¹³ in losses in round 3, and is seeking remedy in the U.S. Court of Appeals for the District of Columbia Circuit. A hearing has been set for October 2003.

¹³These amounts were made publicly available in FedEx's SEC filing for the fiscal year ended May 31, 2003.



- As specified in the Act, air carriers were compensated the lesser of their allowable actual losses or a market share formula.
- As of July 22, 2003, 79 percent of applicants receiving assistance were compensated using the market share formula and so received an amount that was less than their actual September 11 losses.

Figure 2: Number of Carriers Compensated on the Basis of the Formula Amount Versus Allowable Actual Losses

	Passenger carriers	Cargo carriers	Total
Formula amount	278	77	355
Allowable actual losses	62	31	93

Source: DOT's Disaster Relief Program Database, July 22, 2003.

Note: "Passenger carriers" includes carriers receiving assistance under the set-aside provision. An air carrier who applied for both passenger and cargo payments was considered to be two applicants in the chart above. Twenty-nine air carriers applied for both Passenger and Cargo payments. Federal Express is considered to have been compensated on the basis of allowable actual losses.

- As illustrated above, 355 carriers, including 278 passenger carriers, were not fully compensated for their September 11 losses while 93 carriers were fully compensated.
- Eight of the 14 major air carriers were compensated based on actual losses and therefore were compensated for all their September 11 losses.



Disaster Relief Payments

- As of July 22, 2003, \$4.6 billion (93 percent of the \$5 billion) was distributed under the program.

Figure 3: Amounts and Timing of Payments Distributed under the Disaster Relief Program

	Total	Passenger carriers	Cargo carriers
Amounts distributed as of September 30, 2001	\$2,328,126,342	\$2,202,165,142	\$125,961,200
Amounts distributed as of December 31, 2001	\$3,846,963,999	\$3,659,296,165	\$187,667,834
Amounts distributed as of December 31, 2002	\$4,603,108,649	\$4,292,313,681	\$310,794,968
Amounts distributed as of July 22, 2003	\$4,636,891,322	\$4,325,720,094	\$311,171,228
Undistributed funds	\$363,108,678	\$174,279,906	\$188,828,772
Total available under the Disaster Relief program	\$5,000,000,000	\$4,500,000,000	\$500,000,000

Source: DOT's Disaster Relief Database, July 22, 2003.
Note: Distributed funds include refunds of overpayments.

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Disaster Relief Payments

- Overall, the 14 major air carriers were compensated 73 percent of their claimed losses under the Disaster Relief program.

Figure 4: Major Air Carriers' Claimed Losses Related to the Terrorist Attacks Compared to Funds Distributed under the Disaster Relief Program

	Total	Passenger carriers	Cargo carriers
Claimed losses	\$5,588,582,845	\$5,343,782,846	\$244,799,999
Funds distributed	\$4,065,346,384	\$3,883,442,976	\$181,903,408
Percent of claimed losses compensated	73%	73%	74%

Source: Major air carriers' 3rd round applications and DOT's Disaster Relief Program Database, July 22, 2003.
Note: "Claimed Losses" were the losses claimed on the major air carriers' 3rd round applications. These losses generally exclude items such as impairment losses but may not be adjusted in some cases for other losses DOT would have disallowed. "Funds Distributed" includes the \$101 million distributed to Federal Express.

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- Of the \$363 million in undistributed funds:
 - A small amount will be distributed to approximately 50 smaller air carriers that have not yet been issued final payment.
 - DOT officials said that some funds have been set aside for a litigation reserve.
 - In February 2003, \$90 million was rescinded by Public Law 108-7 because DOT assured the Congress that it would not need the full amount of the remaining funds to complete the program.
 - DOT plans to return any remaining undistributed funds to the Department of the Treasury at the conclusion of the program.

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- The act authorized the DOT Secretary to reimburse airlines for increases in insurance premiums following the terrorist attacks. The Secretary delegated this authority to the FAA Administrator.
- The act also specified that the reimbursements be made from the Aviation Insurance Revolving Fund.¹⁴ However, no additional funds were provided, thus limiting the amounts FAA could reimburse carriers. As a result, insurance reimbursements were limited to 30 days.
- FAA established a systematic process for verifying carriers' post-September 11 war risk premium increases, including obtaining and reviewing invoices from the carriers' insurance providers to (1) determine rates in effect during September 4-10, 2001, and to (2) evidence actual increases.

¹⁴ The Revolving Fund finances FAA's Aviation Insurance Program that was established by the Congress in 1951 to provide war risk coverage to carriers flying into hostile territories. In 1977, the Congress authorized the program to cover any risk, not just war risk. To date, FAA has issued only war risk insurance.

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Insurance Reimbursement
FAA's Claim Review Process

- Due to limited staff, FAA hired contractors to assist in reviewing applications and invoices.
- For all carriers that received \$100,000 or more under the Insurance Reimbursement program, including all the major air carriers, FAA instituted a process to reconcile what is commonly called the
 - deposit premium (the up-front premium paid by a carrier based upon the estimated value of its aircraft and the number of passengers expected to be flown) to the
 - earned premium (the end-of-period adjusted premium based on the actual value of the aircraft used during the period and number of passengers flown), and
 - adjusted the carriers' reimbursement payments accordingly.

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Insurance Reimbursement
Premium Increases and FAA Payments

- Prior to September 11, total estimated annual insurance costs for war risk coverage for the 14 major air carriers were approximately \$12 million.
- Post-September 11 total estimated annual insurance costs for war risk coverage for the 14 major air carriers increased to approximately \$719 million.
- As of April 2003, FAA paid 183 carriers \$68 million to reimburse those carriers for 30 days of increased premiums in the war risk component of their overall insurance costs.
- The 14 major air carriers received 85 percent (\$58 million) of the total reimbursements made.

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FAA's Aviation Insurance Program

- After the post-September 11 increases in war risk insurance premiums, the Secretary of Transportation determined that third-party liability war risk insurance from commercial insurers was not available on reasonable terms and conditions.
- And in accordance with the Act, FAA's in-house Aviation Insurance Program, which previously had covered only international flights into hostile territories, extended coverage to domestic flights in order to provide air carriers with an alternative to the commercial third-party war risk insurance.¹⁵
- The expansion of FAA's Aviation Insurance Program has increased the government's risk exposure from a standby basis to as much as \$113 billion for 71 carriers (for the 60-day period ending February 13, 2003) as reported by FAA.

¹⁵ Subsequent legislation required FAA's Aviation Insurance Program to provide hull insurance as well as third-party liability.²⁹



FAA's Aviation Insurance Program

- The Aviation Revolving Fund from which aviation insurance claims are paid may not have sufficient funds to pay a carrier claim in a timely manner.¹⁶
- According to FAA, the liability for a carrier claim ranges from \$500 million to \$4 billion while the current balance in the Revolving Fund is approximately \$194 million.¹⁷
- In regards to FAA's Aviation Insurance Program, the 2003 Emergency Wartime Supplemental Appropriations Act extended war risk insurance coverage to August 31, 2004. The act also authorized the Secretary of Transportation to extend the program to December 31, 2004.
- Because FAA's offering of war risk insurance is intended to be temporary, with authority now expiring, unless further extended, in August 2004, carriers are considering forming a risk retention group to obtain more affordable coverage.
- According to an Air Transport Association official, as of July 22, 2003, no risk retention group has been created.

¹⁶ See also U.S. General Accounting Office, *Aviation Insurance: Issues Related to the Reauthorization of FAA's Aviation Insurance Program*, GAO/T-RCED-97-115 (Washington, DC: May 1, 1997).

¹⁷ Since the inception of the Aviation Insurance Program, only four claims ranging between \$626 and \$122,469 have been paid.



- Our work focused on the major air carriers because the 14 major air carriers represent about 89 percent and 41 percent of the passenger and cargo carrier industries (respectively) in terms of available seat miles and revenue ton miles.

In order to review the disaster relief program, we:

- Reviewed the act and relevant DOT policies and guidance.
- Advised on the content of agreed-upon procedures which were completed by the air carriers' auditors.
- Reviewed DOT's payment determination process, including the calculation of the ASM/RTM universe and the air carrier's formula amount.



In order to review the disaster relief program, we:
(continued)

- Reviewed all three rounds of the major air carriers' applications including the agreed-upon procedures and compared financial information to SEC filings such as annual and quarterly reports, and aviation publications where possible.
- Reviewed adjustments to the major air carriers' loss claims made by both the air carriers and DOT.
- Performed various analytical procedures on information submitted by the major air carriers.
- We did not, however, audit the underlying data submitted as part of the air carriers' applications nor the information contained in the DOT Disaster Relief database.



In order to review the Insurance Reimbursement process, we:

- Obtained and reviewed FAA's requirements for applying for war risk insurance premium reimbursements.
- Obtained an understanding of the effects of the events of September 11 on war risk insurance premium increases through meetings and phone interviews with FAA officials.
- Reviewed the reimbursement packages submitted by the major carriers to FAA.
- Independently recalculated and verified the reimbursement amount for the major air carriers using invoices and other correspondence from insurance providers.



In order to review the Insurance Reimbursement process, we:
(continued)

- Compared actual enplanement and other data used to compute final insurance reimbursement amounts to data reported by the major carriers to DOT's Bureau of Transportation Statistics to check for consistency.
- We did not, however, assess the reasonableness of the premium increases being charged by the insurance providers.
- On August 26, 2003, DOT provided oral comments on a draft of these briefing slides. DOT generally agreed with the facts presented. We incorporated DOT's technical comments as appropriate.
- Our work on the Disaster Relief and Insurance Reimbursement Programs was performed from September 2001 through August 2003 in accordance with generally accepted government auditing standards.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
KIRK K. VAN TINE

Question 1. One of the big issues facing Congress and the Department involves the future of Amtrak. Last summer the Administration issued proposed legislation, introduced by request by Sen. McCain, which would turn over most of the responsibility of paying for passenger rail service to the financially-strapped states. No one I know thinks this bill has much merit. I know of no one in Congress who likes it; the industry does not like it; Amtrak does not like it; and of course, the states especially don't like it. You were DOT's general counsel when this legislative proposal was being developed. Now you are a candidate to be the Department's #2 leader. As Deputy Secretary, what will you do about this proposed legislation that has had such a negative reception?

Answer. If confirmed, I would work with the Secretary and the Federal Railroad Administration to open a dialogue with Congress, the States and other stakeholders to explore the aspects of the Administration's proposal that most concern those who do not support it. While the Administration's legislative proposal is one way to accomplish the needed reform of intercity passenger rail service, it is not the only way. The Administration proposal is a conceptually sound and thoughtful attempt to address the serious problems confronting Amtrak today, and it can prompt innovative solutions in areas where the current approach shortchanges commuters and intercity travelers, as well as affected States, employees, and other stakeholders. If confirmed, I would look forward to discussing alternative approaches to reform that would be consistent with the five principles the Secretary set out in June 2002.

Question 1a. What other mechanism do you see within the Federal Government to raise the adequate funds needed to cover the capital backlog on the Northeast Corridor, the infrastructure improvements for high speed rail in new corridors and improvements to services currently operated by Amtrak?

Answer. The Administration is committed to continued support of intercity passenger rail and continues to believe that Federal funding will be necessary in the future. While the Administration's legislative proposal establishes a framework in which Federal support would be provided for capital projects, the framework set out in the Administration's proposal is flexible enough to accommodate and encourage other forms of financing. For example, more than 10 States currently contribute financial support towards Amtrak's operating costs or capital improvements, or both. If service on the Northeast Corridor and elsewhere were more tailored to State and regional needs, and if weaknesses in accounting and financial reporting, internal controls, and operational efficiency were addressed, it is possible that more States would agree to provide financial support for intercity passenger rail service.

Question 2. As Congress works on appropriations for the next year, it appears that Amtrak will be forced to limp along for yet another year. The Senate has approved \$1.35 billion for Amtrak, which is \$350 million less than Amtrak says it will need. The House has approved only \$900 million. As Deputy Secretary of DOT, you may be asked to serve as the Secretary's representative on the Amtrak Board of Directors. What do you believe you could do as a member of the Amtrak Board to ensure that the railroad gets enough funding to improve its fiscal health, infrastructure, and performance?

Answer. The most important way to assure that Amtrak gets the funding it needs is to establish a level of confidence and trust that Amtrak has become a well-run, soundly managed business operation. Presently, there appears to be widespread skepticism that Amtrak spends the taxpayers' money efficiently and wisely. That skepticism must be addressed with results. While Amtrak's management has made great strides over the past two years, the Board is really the only body that can ensure that Amtrak improves its financial accounting and project management, and ensure that Amtrak gives accurate information to Congress about the costs and benefits of providing particular services. The individual Board members must be willing to work collaboratively with Amtrak's management and devote sufficient time to their duties to ensure that Amtrak is as efficient as possible in providing intercity passenger rail services.

Question 3. As a nation, we have provided funding for highways since the 1950s at an 80 percent Federal share or better. We have provided funding for transit systems for several decades at an 80 percent Federal share by law, although this Administration is pushing down the Federal match to 50 percent in some areas. We have provided funding for the aviation system for airport improvements at 80 percent Federal share or better, for air traffic control operations, for security, and for bailouts. Do you think we should continue to perpetuate this bias against investment in our passenger rail system?

Answer. Currently, unlike intercity passenger rail, highway and airport capital funding is largely financed through excise taxes on users of those facilities, and some state matching funds are required. Without imposing new taxes, the Administration proposal advocates a mechanism similar to the mechanisms that presently exist for funding public transit infrastructure projects. Funding responsibility for capital projects would be shared between the Federal Government and the affected jurisdiction, in the same manner as the Administration proposes for transit new starts in SAFETEA.

Question 3a. What about investment in freight rail projects that show a clear public benefit? For example, we are looking at the nationally significant project in Chicago that involves freight, commuter, intercity passenger rail, as well as state and local infrastructure improvements affecting highway safety and mobility. What is the avenue to address such investment and what role should the Federal Government play?

Answer. The Department has two financial programs that can assist freight rail projects that show a clear public benefit. The Railroad Rehabilitation and Improvement Financing program (RRIF) can provide loans at the cost of money to the government for terms up to 25 years for any rail project. The Transportation Infrastructure Finance and Innovation Act program (TIFIA) proposed in SAFETEA can provide Federal financial assistance to large projects that include intercity passenger rail facilities and freight rail projects. It is my understanding that none of the larger freight railroads have requested Federal assistance to date, and that some of those railroads have expressed opposition in the past to Federal assistance. I also understand that some of the larger railroads are now reconsidering participating in projects that have both public and private benefits, with the Chicago project being an excellent example. I believe the Department should be willing to work with all of the interested parties to identify the appropriate role for the Federal Government in helping realize the benefits these projects can yield.

Question 4. This year, the Administration proposed that Congress appropriate \$900 million for Amtrak, and \$303 million for Iraq's railroads. I find it somewhat ironic that the Administration believes we should spend \$303 million for the railroads in a country the size of California, but then proposes to strike a fatal blow to its own national passenger rail system by reducing its funding to half of what it needs for the coming year. Do you think this proposal is indicative of the Administration's commitment to passenger rail in the United States?

Answer. The Administration is firmly committed to the continuation of intercity passenger rail service. While the Administration believes that the current business model for providing that service is flawed, it has consistently said that it would support a substantial Federal investment if the business model is reformed. Over the past few years, Secretary Mineta has taken extraordinary measures to keep the present system solvent while attempting to achieve a consensus on a model that can work over the long term. For example, in 2001, Secretary Mineta reluctantly allowed Amtrak to mortgage its rights to use Pennsylvania Station in New York City. Similarly, in 2002, he granted a \$100 million loan to Amtrak under the RRIF program. Without either of those actions, Amtrak may well have had no alternative but bankruptcy.

Question 5. I have noticed in the past few years that communication between the DOT and Congress has deteriorated. My staffers find it increasingly difficult to acquire information from the Department concerning rulemakings and legislation under development. Frequently, DOT places the blame on OMB for its inability to share information. What can you do as Deputy Secretary to improve the channels of communication between the Department and the Congress?

Answer. As General Counsel, one of my priorities was to respond promptly to Congressional requests for technical assistance and other information. In most cases, I was able to provide the requested assistance with minimal delays. Occasionally, however, the Department is unable to respond to questions concerning its position on pending rulemaking or legislative proposals because they are already in the formal clearance process. If confirmed, I would try to establish a regular, continuing dialogue to address issues of concern and get feedback on potential solutions before commencing the formal process. I would expect the Department to continue to respond expeditiously to most requests as in the past.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV
TO KIRK K. VAN TINE

Question 1. I was deeply disappointed by the Department of Transportation's (DOT) decision regarding the citizenship and control of DHL Airways. Given the precedent setting nature of this case, I find the DOT's actions in general and Mr. Van Tine's in particular in this matter troubling, and I am requesting that Mr. Van Tine resolve some outstanding questions that I have about it.

In the DOT's letter to me of May 7, 2002, then DOT-Assistant Secretary Van de Water explained that the Department of Transportation has concluded its investigation into the citizenship and control of DHL Airways. However, DOT did not lay out in any detail how the Department reached its conclusion.

On what legal grounds did DOT determine that DHL was a U.S. citizen?

Answer. It is my understanding that the views described in the Assistant Secretary's letter of May 7, 2002, were based on the information presented to the Department at that time and the application of the statute governing citizenship determinations in 49 U.S.C. § 40102(a)(15), and the past administrative decisions of the Department and the Civil Aeronautics Board applying the statutory tests. The Department initially was presented with this issue as a part of the routine continuing fitness review resulting from a change in DHL Airways ("DHL," now ASTAR) ownership. Under the Department's rules, such reviews are handled informally. *See* 14 C.F.R. § 204.5(c). The purpose of the informal continuing fitness review process is to determine whether, based on the information provided, an on-the-record docketed proceeding should be instituted by the Department. In this case, in addition to DHL, both UPS and FedEx met with and provided information to Department staff.

The Department's informal review was completed in May 2002 with a conclusion that, based on the information available, the Department did not believe there was a sufficient reason to institute a formal proceeding. Several interested parties subsequently requested such a proceeding by filing formal petitions challenging DHL's citizenship. In August 2002, the Department consolidated those petitions into a single docket (OST 2002-13089). The Department has not yet made a final determination in that proceeding as to DHL's citizenship.

In the Emergency Wartime Supplemental Appropriations Act, 2003 (April 16, 2003), after formal, on-the-record proceedings were under way, Congress enacted a provision directing the Secretary to use an Administrative Law Judge to resolve the issues in Docket OST 2002-13089. The next day, in compliance with that provision, by order of the Assistant Secretary for Aviation and International Affairs dated April 17, 2003, the matter was referred to an Administrative Law Judge. On October 15, the hearing before the Administrative Law Judge was concluded, and his recommended decision is due January 2, 2004. After it is issued, the Department's regulations provide for discretionary review. *See* 14 C.F.R. § 302.32. If reviewed by the Department, the decision will either be adopted, reversed, or remanded. After the Department issues its final decision, any aggrieved party may file a petition for judicial review in the U.S. Court of Appeals.

The final resolution of the matter will depend on an analysis of the evidence presented in the proceeding and, as previously noted, the application of the statute governing citizenship determinations in 49 U.S.C. § 40102(a)(15), and the past administrative decisions of the Department and the Civil Aeronautics Board applying the statutory tests. Because the issue of the precise legal and factual tests that should be used in determining citizenship is among those pending in the present proceeding before the ALJ, it would be improper for me to comment further on that issue here. The legal grounds for the Department's final action in this matter will be set forth in the Department's decision on the ALJ's recommended decision.

Question 2. It is my understanding that the General Counsel's office would normally make this decision. Why did Mr. Van Tine refer this matter to the Office of the Assistant Secretary for Aviation and International Affairs?

Answer. As explained above, the citizenship review described in your question was a part of an informal continuing fitness review occasioned by the change in ownership of DHL Airways ("DHL," now ASTAR). That type of review is conducted pursuant to the Department's statutory authority to regulate limited aspects of airline economic matters, set forth in 49 U.S.C. Subtitle VII, Part A. In regulations dating from the transfer of the duties of the Civil Aeronautics Board to the Department in 1985, the Secretary of Transportation has delegated to the Assistant Secretary for Aviation and International Affairs (not the General Counsel) the responsibility and authority within the Department to make decisions in such matters. *See* 49 C.F.R. § 1. The Office of General Counsel provides legal support on issues of statutory interpretation, such as the meaning of the statutory citizenship requirements, and assists in the review of factual information provided to the Department by car-

riers. As General Counsel, my role was to ensure the legal sufficiency of the Department's actions, and I concluded that those actions were in compliance with all applicable statutes and regulations.

Question 3. In the citizenship determination proceedings, DOT officials had several ex parte communications with DHL Airways, which is appropriate provided DOT disclosed this or announced that they were waiving the disclosure policy. Did DOT disclose these ex parte meetings or seek a disclosure waiver? If not, why not?

Answer. As explained above, the original review, begun in the fall of 2000, was a part of the continuing fitness review that was triggered under the Department's regulations by the proposed change in ownership of DHL Airways ("DHL," now ASTAR) in 2000. See 14 C.F.R. § 204.5. Continuing fitness reviews, including those involving citizenship, are not on-the-record proceedings under the Department's existing regulations. See 14 C.F.R. § 204.5(c). Rather, since the days of the Civil Aeronautics Board, they have been handled as informal reviews under the Department's rules, through meetings with and information requests to carriers in which proprietary and business confidential information is considered by the Department. In that kind of investigation, the ex parte rules do not apply. See 14 C.F.R. Part 300.

Question 4. I have been briefed by the Department's Inspector General team that was asked by the House Transportation Committee to investigate how this case was handled. They have found that this case was handled in an ad hoc, informal, closed way; that the policy-level leadership of the Department was not intimately involved in the decisions regarding this case; and that the input from, and information to, other affected parties to this case was limited. Does Mr. Van Tine agree with the IG's assessment of how this case was handled?

Answer. While I believe that the Department's procedures for handling this case complied with all applicable legal requirements, I also believe that the procedures for resolving citizenship issues should be reviewed in light of the Inspector General's report, and that the recommendations in the report and the comments received by the Department should be given serious consideration.

After meeting with the Inspector General to discuss his findings regarding this matter, I advised the Assistant Secretary for Aviation and International Affairs that the Inspector General's procedural recommendations should be given serious consideration. On March 5, 2003, the Department issued a Notice Requesting Comments on the Inspector General's Report. That Notice was filed in the pending docketed proceeding regarding DHL's citizenship. Subsequently, on July 30, 2003, the Department published an Advance Notice of Proposed Rulemaking requesting comments, in general, on the procedures for reviewing citizenship cases. The comment period closed on September 29, 2003. The Department received comments from 10 parties. The Department is currently in the process of evaluating those comments and determining the best way to make the citizenship review process more open and transparent.

Question 5. Will Mr. Van Tine be implementing the IG's recommendations?

Answer. One of the management responsibilities of the Deputy Secretary would be to ensure that the Assistant Secretary for Aviation and International Affairs and the General Counsel complete the review of the Department's procedures in a timely manner, and to review any recommended improvements to the process before they are presented to the Secretary for approval. If confirmed, I would ensure that the important concerns raised by the Inspector General are thoroughly and sufficiently addressed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
JEFFREY A. ROSEN

Question 1. You have a lot of experience in the private sector managing large groups of lawyers, which makes you qualified to be DOT General Counsel in one sense. However, your experience working with transportation issues is rather limited. How do you propose to bring yourself "up to speed" on the many diverse transportation issues now at hand, and particularly with respect to the reauthorization of TEA-21 legislation which should happen early next year?

Answer. I recognize that the Department addresses a wide range of diverse transportation issues, including those involving maritime, highway, railroad, transit, trucking, motor vehicle safety, hazardous materials, aviation, and others. Since it would be a rare lawyer who is expert in all of those areas, additional preparation to gain an in-depth understanding of the full range of transportation issues is obviously necessary. I have started the process and will continue getting "up to speed" by focusing on the operative statutes enacted by Congress, meeting with various of-

officials throughout the Department to gain an understanding of the issues they confront, attending meetings in an observer role, studying the status of various regulatory processes, and more generally by looking for ways to listen and learn as extensively as possible—both within DOT and externally. While I cannot currently participate in the Department's decision-making, I am focusing on identifying the current legal issues confronting the Department and its operating administrations, so that if confirmed I would be well-prepared to act as the Department's Chief Legal Officer. I believe that my background as a litigator is well-suited to this task, because the preparation required in this instance is similar to that needed with respect to learning the legal framework applicable to a variety of lawsuits in which some involve previously-known subject areas and some do not.

If I am confirmed, I would also look forward to participating in the shaping of transportation legislation that is consistent with the Secretary's Strategic Plan. I am currently in the process of reviewing the legislative proposals that have been made by the Secretary, including the SAFETEA proposal, and I hope to be able to play a role in helping the Secretary and the Congress achieve a long-term reauthorization, if I am confirmed by the Senate.

Question 2. What do you see as your role within DOT with respect to working with the Department's policy-makers? Will your role be limited to that of legal advisor to the ones setting Departmental policy, or will you have a direct role in writing transportation policy yourself?

Answer. As I see it, the primary responsibility for transportation policy rests with the Secretary, and ultimately with the President and the Congress. Within the Department of Transportation, the Deputy Secretary, the Under Secretary of Transportation for Policy, the Administrators, and others obviously have a major role to play in policy matters.

The General Counsel has the responsibilities specified in 49 C.F.R. § 1.23(c). The Department's own rules expressly identify the General Counsel as the "final authority within the Department on questions of law." The General Counsel participates in matters involving rulemaking, litigation, international negotiations, and legislation, among other things. It is therefore a broad role that involves serving the Secretary and the President as the Chief Legal Officer of the Department of Transportation. From my discussions to date with Secretary Mineta, I anticipate that I will participate broadly as a legal advisor if I am confirmed by the Senate.

Question 3. As you know, one of the big issues facing Congress and the Department involves the future of Amtrak. There are a number of bills pending in Congress now, including one proposed by the Administration and introduced by request by Sen. McCain. All of the bills propose substantial changes intended to improve Amtrak's performance, fiscal health, and infrastructure. However, the bills take very different approaches in attempting to achieve those improvements. What do you believe the Federal Government's role should be in making the very needed improvements to Amtrak?

Answer. At the risk being overly simplistic, the Federal Government has a vital role in making improvements to Amtrak, because Amtrak is an entity with directors appointed by the President, and with substantial Federal funding. My own experience with Amtrak to date is largely limited to experience as a passenger, but I agree with Secretary Mineta's statements that the Federal Government has a substantial interest in the development of "a truly healthy and viable national passenger rail system." One important aspect of intercity passenger rail transportation should be ensuring that its benefits in addressing transportation congestion are integrated with the other modes of transportation. The fact that several proposals are before Congress at this time speaks to the elemental issue—the need to adopt a model for intercity passenger rail that is in tune with current realities. I am in the process of studying the current situation and the pending proposals, and if confirmed would look forward to assisting the Secretary in advancing a practical solution that well-serves the American people.

Question 4. Some of the modal administrations within DOT, most notably the Federal Motor Carrier Safety Administration, are very late in issuing regulations which the Congress has directed them to do. What will you do as General Counsel to see that the overdue rulemakings are issued? What will you do to improve the timeliness of the various administrations in issuing new rulemakings?

Answer. From what I have learned to date, Secretary Mineta has made it a priority for the Department to complete its rulemakings in a more timely and expeditious way than in the past, and steps were taken during the last two years to pursue that objective. In October 2002, the Department implemented a new rulemaking tracking system, which appears to be very helpful. Using this available tracking mechanism, the General Counsel can assist in ensuring that priorities and sched-

ules are established, and can monitor the progress. The Office of General Counsel can also provide training to participants in the rulemaking process, and can continue to encourage those responsible for various rules to pursue them efficiently and on time—especially where Congress has established a deadline for action or has otherwise stressed the need to act quickly. If I am confirmed, I will work with knowledgeable individuals within the Department who have in-depth experience, including in particular the Deputy General Counsel and the Assistant General Counsel for Regulations and Enforcement, as well as others within the Department and the operating Administrations, to continue to make progress in improving the rule-making process.

